

1                   UNITED STATES DISTRICT COURT  
2                   EASTERN DISTRICT OF MISSOURI  
2                   SOUTHEASTERN DIVISION

3                   UNITED STATES OF AMERICA,

4                   Plaintiff,

5                   vs.    Cause No. 1:18CR98 SNLJ

6                   BARRETT C. SWAN,

7                   Defendant.

8                   =====

8                   TRIAL DAY 2 OF 2  
9                   Pages 295 - 506

10                  BEFORE THE HONORABLE STEPHEN N. LIMBAUGH, JR.  
10                  UNITED STATES DISTRICT JUDGE

11                  JULY 9, 2019

12                  =====

12                  APPEARANCES

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(THE FOLLOWING PROCEEDINGS WERE HELD  
IN OPEN COURT AND WITH THE DEFENDANT PRESENT: )

3 (THE PROCEEDINGS BEGAN AT 9:14 A.M.)

4

## TRIAL

The trial began on Monday the 8th day of July, 2019, and concluded on Tuesday the 9th day of July, 2019, before the Honorable Stephen N. Limbaugh, United States District Judge, of the Eastern District of Missouri, Southeastern Division, before a jury and one alternate juror, who were impaneled, selected and sworn.

14 (Proceedings resumed in open court  
15 outside the presence of the jury.)

16 THE COURT: As you probably know, by  
17 now Juror Anderson is it --

THE CLERK: Yes, sir.

19 THE COURT: -- has been arrested for  
20 an outstanding warrant. He also had apparently  
21 multiple arrests for felonies. And so at this  
22 point he's no longer available to serve, and the  
23 Court will substitute the alternate in his place.

Do you want to elaborate on that?

25 Do you know anything more than I do?

1                   MR. SORRELL: That's exactly what I  
2 know, Judge, but, no, I don't have anything more  
3 to elaborate on that. I would have stricken him  
4 if he would have told us about his felony  
5 arrests, but he did not. We did strike Juror  
6 Number 22 for exactly that reason.

7                   THE COURT: Do you want to introduce  
8 any kind of records in support of that?

9                   MR. SORRELL: Judge, if I may. Do  
10 you want me to -- I've got a record of his --

11                  THE COURT: Well, let me just ask,  
12 any objection by Defendants?

13                  MS. BOOTH: No, sir.

14                  THE COURT: All right. Never mind.

15                  MR. SORRELL: Okay. Thank you.

16                  THE COURT: I think that takes care  
17 of it.

18                  MR. SORRELL: Yes, sir.

19                  THE COURT: So the second thing --  
20 the next thing we need to do is for you to come  
21 up, if you would, Mr. Swan, with your lawyer. I  
22 have to question you. I want you first to be  
23 sworn in by the Court Clerk.

24                  BARRETT SWAN,

25 being produced and sworn, testified as follows:

1                   THE COURT: Okay. Now, at this  
2 point of the trial the Government has rested, and  
3 now it's time for you to introduce any evidence  
4 that you want to introduce, including testifying  
5 yourself, and, of course, you'll be allowed to  
6 testify. That goes without saying. And you can  
7 tell your side of the story. And then, of  
8 course, you'll also be entitled to call witnesses  
9 on your own behalf.

10                  But if you decide to testify, then  
11 the Government's lawyer will be allowed to  
12 cross-examine you. You understand that, don't  
13 you?

14                  THE DEFENDANT: Yes, sir.

15                  THE COURT: And as part of that  
16 cross-examination they may or may not try to  
17 introduce evidence of prior convictions to  
18 attempt to impeach your credibility. Do you  
19 understand that too?

20                  THE DEFENDANT: Yes, sir.

21                  THE COURT: You've talked about this  
22 with your lawyer at length, haven't you?

23                  THE DEFENDANT: Yes, sir.

24                  THE COURT: Now, on the other hand,  
25 if you decide not to testify, that can't be used

1 against you. You have a right against  
2 self-incrimination under the Constitution. You  
3 know that too, don't you?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And not only that, if  
6 you decide not to testify, the jury will not be  
7 allowed to hold it against you that you decided  
8 not to testify. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And I want to reinforce  
11 that by telling you that I will also -- if you  
12 decide not to testify, I will give a written  
13 instruction to the jury that they cannot hold it  
14 against you that they -- that you decided not to  
15 testify. Do you understand all that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Now, and, again, you've  
18 had plenty of time to talk with your lawyer about  
19 this; right?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Have you come to a  
22 decision on whether or not to testify in the case  
23 then?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And what is that?

1                   THE DEFENDANT: That I will.

2                   THE COURT: Okay. That's fine.

3 With that do you want to add anything further  
4 then, counsel?

5                   MS. BOOTH: No, sir. Other than I  
6 guess Mr. -- the chain will be removed from his  
7 leg so that he can walk up to the witness stand?

8                   THE COURT: Yep. That's fine.

9                   MS. BOOTH: Sir, yes, one -- we're  
10 finished with that now.

11                  THE COURT: You can have a seat  
12 then.

13                  MS. BOOTH: One final --

14                  THE COURT: What's that?

15                  MS. BOOTH: Your Honor, prior to the  
16 defense calling our witnesses there is a  
17 stipulation between the Government and the  
18 defense. There was a police officer who could  
19 not be here today --

20                  THE COURT: Okay.

21                  MS. BOOTH: -- so we have some  
22 stipulated testimony that everyone has signed.

23                  THE COURT: Do you want to start  
24 with that first when we call the jury in?

25                  MS. BOOTH: Yes, sir. I'd like to

1 start with it --

2 THE COURT: Yeah, that's fine.

3 MS. BOOTH: -- when I do the defense  
4 case in chief. And is this something you would  
5 like me to read into the record?

6 THE COURT: Sure. Just like Mr.  
7 Sorrell did.

8 MS. BOOTH: Yes, sir. Okay.

9 THE COURT: That would fine.

10 MS. BOOTH: Okay. That's what we'll  
11 do then.

12 THE COURT: And then what other  
13 witnesses do you have so I can calibrate the  
14 time?

15 MS. BOOTH: Sir, we have -- we'll  
16 have Ms. Ebony Stigall. We will have Ms. Shavion  
17 Reed. We have Ms. Tiara Thorpe.

18 THE COURT: Okay.

19 MR. COHEN: And then Mr. Swan will  
20 be last.

21 THE COURT: Okay.

22 MS. BOOTH: We are -- Ms. Thorpe may  
23 be running late, so if she's not here by the time  
24 we call her, we'll have to switch up the order  
25 with Mr. Swan and Ms. Thorpe, but so that's how

1 we'll proceed.

2 THE COURT: All right. Any  
3 preliminary matters?

4 MR. SORRELL: No, Your Honor.  
5 Thank you.

6 THE COURT: Okay. You can bring the  
7 jury in.

8 (Proceedings resumed in open court.)

9 THE COURT: You may be seated.

10 Good morning, ladies and gentlemen.  
11 Juror Number 7 is no longer available. And for  
12 that reason the alternate Ms. Carroll is now a  
13 regular juror.

14 And why don't you in the back row  
15 just everyone scoot up one seat, and that will be  
16 easier for you to see and hear the witness.

17 And with that the Government rested  
18 at the end of the day yesterday.

19 So, Ms. Booth.

20 MS. BOOTH: Yes, sir. Your Honor,  
21 I'll begin with the Defendant's case in chief by  
22 reading the stipulated testimony of Cape  
23 Girardeau canine officer Jonathan Brotz. He  
24 could not be here today, but he has signed this  
25 stipulated testimony as have the parties.

1                   On May 26th, 2018, at approximately  
2 3:40 hours I, canine Officer Brotz, was sitting  
3 in my patrol car facing east towards the  
4 Mississippi River bridge on College Street near  
5 the intersection of South Middle Street. I was  
6 talking to Officer Evans who was present with his  
7 patrol car parked next to me. The headlights and  
8 taillights in my patrol vehicle were illuminated.

9                   I observed a newer model black Dodge  
10 Charger and another vehicle coming from the  
11 Mississippi River bridge traveling west on  
12 Route 74 passing Fountain Street at a high rate  
13 of speed. The Dodge Charger was in the westbound  
14 driving lane. The other car, a gray car, was in  
15 the passing lane. It appeared as though the cars  
16 were racing each other.

17                   I looked at the radar unit in my  
18 patrol car, and it showed the Dodge Charger  
19 traveling at 90 miles per hour in a 45 mile per  
20 hour zone. Officer Evans notified dispatch via  
21 radio that he had a black car traveling at a high  
22 rate of speed traveling west on Route 74.

23                   Officer Evans left our location to  
24 intercept the vehicle. Via the radio I learned  
25 that during the pursuit the black car wrecked.

1 I responded to the area of the wreck. Shortly  
2 after seeing a black male with dreadlocks running  
3 I was advised over the radio by Sergeant Edwards  
4 that he had a person in custody. It was the male  
5 I observed running.

6 Sergeant Edwards and I  
7 simultaneously searched the male's person, and he  
8 didn't have anything illegal on his person. I  
9 escorted the man to a patrol car, and he was  
10 placed in the backseat of the patrol car without  
11 incident.

12 Your Honor, I call Ebony Stigall to  
13 the stand.

14 EBONY STIGALL,  
15 being produced and sworn, testified as follows:

16 THE COURT: You may proceed.

17 DIRECT EXAMINATION

18 BY MS. BOOTH:

19 Q. Please state your name for the record.

20 A. Ebony Stigall.

21 Q. Ms. Stigall, how old are you?

22 A. 35.

23 Q. And how are you employed?

24 THE COURT: Can you pull the  
25 microphone up to you so that everybody can hear

1 you.

2 THE WITNESS: Yes.

3 A. I work for St. Francis Medical Center.

4 Q. Do you have any criminal convictions?

5 A. No, ma'am.

6 Q. Do you know Barrett Swan?

7 A. Yes.

8 Q. How long have you known him and in what  
9 capacity?

10 A. Since 2013 dating off and on.

11 Q. What is your relationship status with  
12 him right now?

13 A. We don't have a relationship right now.

14 Q. Were you in a dating relationship with  
15 Mr. Swan at the beginning of last summer in May  
16 of 2018?

17 A. Yes.

18 Q. Would he spend the night at your home  
19 sometimes?

20 A. Yes.

21 Q. And your home, was that located here in  
22 Cape Girardeau?

23 A. Yes.

24 Q. Did you live across the street from a  
25 Cape Girardeau city police officer at that time?

1 A. Yes.

2 Q. Do you know which officer it was?

3 A. No.

4 Q. When Mr. Swan would spend the night at  
5 your home, would he park his car in your  
6 driveway?

7 A. Yes.

8 Q. And what type of car did Mr. Swan own at  
9 that time?

10 A. A 2015 black Charger.

11 Q. Do you remember the events of the day of  
12 Friday, May 25th of 2018?

13 A. Yes.

14 Q. Did Mr. Swan spend the night at your  
15 home on the previous night, the night of  
16 Thursday, May 24th, 2018?

17 A. Yes.

18 Q. Did he park his Dodge Charger in your  
19 driveway when he came to spend the night?

20 A. Yes.

21 Q. And did you go to work on Friday, May  
22 the 25th?

23 A. Yes.

24 Q. When you left home to drive to work, did  
25 you take your car?

1 A. No.

2 Q. What car did you drive to work?

3 A. His Charger.

4 Q. And why is that?

5 A. It was parked behind me.

6 Q. And your car at the time that you were  
7 driving, what car was that?

8 A. I had a rental.

9 Q. So you left that car behind in the  
10 driveway?

11 A. Yes.

12 Q. Do you recall what color that rental car  
13 was?

14 A. Silver.

15 Q. Was it out of the ordinary for you and  
16 Mr. Swan to drive each other's cars from time to  
17 time?

18 A. No.

19 Q. Did you own a firearm at the time you  
20 dated Mr. Swan?

21 A. Yes.

22 Q. And how long have you been a firearm  
23 owner?

24 A. Since I was probably 18.

25 Q. Did you have any firearm training or

1 military training, anything like that?

2 A. Yes. I was in ROTC since I was a  
3 freshman, and we had marksman training.

4 Q. And ROTC stands for?

5 A. Junior -- I can't remember.

6 Q. Junior reserve officer training course?

7 A. Yes.

8 Q. In high school?

9 A. Yes.

10 Q. Was that all four years of high school?

11 A. Yes.

12 MS. BOOTH: Your Honor, may I  
13 approach?

14 THE COURT: Yes.

15 BY MS. BOOTH:

16 Q. Ms. Stigall, did you own a Smith &  
17 Wesson nine-millimeter firearm when you dated  
18 Mr. Swan back in May of 2018?

19 A. Yes.

20 Q. And, ma'am, do you recognize this  
21 exhibit, this Government's Exhibit No. 9?

22 A. Yes.

23 Q. And can you tell me what this is?

24 A. It's my nine-millimeter.

25 Q. When was the last time you saw this

1 firearm?

2 A. Friday, May 25th.

3 Q. Ms. Stigall, when you dated Mr. Swan,  
4 you were aware that he was a convicted felon?

5 A. Yes, ma'am.

6 Q. As such you were aware that he couldn't  
7 possess any firearms?

8 A. Yes, ma'am.

9 Q. Did you take that matter seriously and  
10 always take care to keep your firearm from  
11 Barrett?

12 A. Yes, ma'am.

13 Q. What would you do with your firearm when  
14 Barrett would stay at your home?

15 A. Put it in my garage in my car that was  
16 locked.

17 Q. And Barrett knew you had your firearm?

18 A. Yes.

19 Q. Did he take care to stay away from your  
20 firearm?

21 A. Yes.

22 Q. Was it your practice to carry the  
23 firearm with you at times when you were not with  
24 Mr. Swan?

25 A. All the time.

1 Q. And why did you do that, ma'am?

2 A. I had been robbed several times. I'm  
3 single.

4 Q. Were you in possession of your firearm  
5 while operating Mr. Swan's Charger on Friday, May  
6 the 25th?

7 A. Yes.

8 Q. When did you get that Smith & Wesson  
9 firearm?

10 A. Sometime in the previous year.

11 Q. The year prior to May 25th of 2018?

12 A. Yes.

13 Q. And where did you purchase that firearm?

14 A. In Poplar Bluff.

15 Q. Was there a specific place in Poplar  
16 Bluff, a store?

17 A. No. It's like a swap meet thing that  
18 they do down on the south side of town.

19 Q. A swap meet like a sale barn?

20 A. Yes.

21 Q. Are you familiar with Poplar Bluff?

22 A. I grew up there.

23 Q. And that's where you purchased this  
24 firearm?

25 A. Right.

1 Q. Did you and Mr. Swan have plans to spend  
2 Memorial Day weekend of 2018 together?

3 A. Yes.

4 Q. What were those plans?

5 A. We were supposed to be going to Indiana.

6 Q. Was that to spend some time with some  
7 family?

8 A. Yes. We was supposed to have a family  
9 cookout. All my sisters always get together, and  
10 we had made plans to do that again.

11 Q. When did you plan to leave for Indiana?

12 A. Friday after work.

13 Q. What car were you-all going to take?

14 A. We were going to take the rental.

15 Q. When you got off work, Ms. Stigall, on  
16 Friday, was Mr. Swan ready to leave for Indiana?

17 A. No.

18 Q. At some point did you travel to his home  
19 to leave with him in the rental car for Indiana?

20 A. Yes.

21 Q. And at that time where was he living?

22 A. With his mom.

23 Q. So he wasn't home when you went to his  
24 mother's home?

25 A. No.

1 Q. Did that frustrate you?

2 A. Yes.

3 Q. Why is that?

4 A. Because I was already leaving late. I  
5 had already missed some of the things we were  
6 supposed to do that day.

7 Q. Things that you planned to do in  
8 Indiana?

9 A. Yes.

10 Q. Did you decide to wait for Mr. Swan  
11 before leaving for Indiana?

12 A. Yes.

13 Q. What did you do with your time while you  
14 waited for him?

15 A. His daughter had forgotten some stuff,  
16 so we went to the store to pick some things up.  
17 We went and packed her bag and then watched a  
18 movie downstairs.

19 Q. And so you did run some errands?

20 A. Uh-huh.

21 Q. And at that time you were still driving  
22 the Dodge Charger?

23 A. Correct.

24 Q. Did you have your firearm with you at  
25 that time?

1 A. Yes.

2 Q. And where was the firearm located?

3 A. In the car.

4 Q. Was it located anywhere specific in the  
5 car?

6 A. In the door.

7 Q. Ms. Stigall, I'm showing you Defendant's  
8 Exhibit B. Do you recognize this as the black  
9 Charger that you were driving on Friday, May the  
10 25th of 2018?

11 A. Yes, ma'am.

12 (Defendant's Exhibit No. B, Photo,  
13 was identified.)

14 BY MS. BOOTH:

15 Q. And, ma'am, before you do, I'll explain.  
16 You are able to touch the screen in front of you.  
17 And where you touch it will indicate on the  
18 screen where your finger is in red. Can you show  
19 me where you carried the gun in the Dodge Charger  
20 IF this picture is clear enough for you?

21 A. Here.

22 Q. I'm not seeing anything come up on my  
23 screen. Oh, there we go.

24 MS. BOOTH: Your Honor, may I  
25 approach Ms. Stigall?

1                   THE COURT: Yeah, I mean, that's  
2 fine.

3 BY MS. BOOTH:

4                   Q. Just to make it clear, Ms. Stigall, on  
5 Defendant's Exhibit B if you could take this pen  
6 and mark where you carried that firearm. I'll  
7 display this.

8                   So, ma'am, you've indicated right here;  
9 correct?

10                  A. Correct.

11                  Q. When you returned to Barrett's mother's  
12 home after you ran your errands, was he home at  
13 that time?

14                  A. No.

15                  Q. Did the night wear on without Mr. Swan  
16 coming home to leave for Indiana?

17                  A. Yes.

18                  Q. Did that frustrate you?

19                  A. Yes.

20                  Q. Were you attempting to call him to find  
21 out where he was and why he wasn't home?

22                  A. Yes.

23                  Q. Was he taking your calls?

24                  A. Some of them.

25                  Q. Some of them? Ms. Stigall, were you

1 beginning to suspect that Mr. Swan could be out  
2 with another woman at that time?

3 A. Yes.

4 Q. And why would you suspect that?

5 A. Because that's what he does.

6 Q. Did you suspect that he was with any  
7 specific woman?

8 A. Yes.

9 Q. And who would that be?

10 A. Shavion Reed.

11 Q. And who was Shavion Reed?

12 A. At the time it was an ex.

13 Q. So you had suspected that Mr. Swan was  
14 still seeing Shavion while he was dating you?

15 A. Uh-huh.

16 Q. Is that a yes, ma'am?

17 A. Yes.

18 Q. Had you previously confronted Mr. Swan  
19 about your suspicions about Shavion?

20 A. Uh-huh, yes.

21 Q. Had you received a straight answer from  
22 him?

23 A. No.

24 Q. As you were waiting for Mr. Swan to come  
25 home, did you receive a call or a text from

1 someone regarding Mr. Swan's whereabouts?

2 A. Yes.

3 Q. And what information did you receive?

4 A. That he was sitting in the parking lot  
5 with that girl.

6 Q. And what parking lot would that be?

7 A. At The Pony.

8 Q. And can you tell the jury what The Pony  
9 is?

10 A. It's a strip club.

11 Q. And is it located across the bridge from  
12 Cape Girardeau in Illinois?

13 A. Yes.

14 Q. Located immediately across the bridge.

15 Do people gather in the parking lot of that  
16 nightclub to socialize?

17 A. Yes.

18 Q. How did you feel when you got that  
19 information about Mr. Swan being across the river  
20 with a woman?

21 A. I was pissed.

22 Q. And what action did you take upon  
23 receiving that information?

24 A. I got in the car and went over there.

25 Q. Were you in a hurry to get to Illinois?

1 A. Yes.

2 Q. Why the hurry?

3 A. Because I wanted to give him a chance to  
4 tell me why.

5 Q. When you left in the Charger to drive to  
6 Illinois, did you remember that your firearm was  
7 in the door pocket?

8 A. I wasn't thinking about that then.

9 Q. Were you aware at that time as well as  
10 right now that Illinois' gun laws are very  
11 different from Missouri's?

12 A. Yes.

13 Q. And the reason why you did not remove  
14 your firearm before going to Illinois please tell  
15 us again.

16 A. Because I was angry, and I wasn't  
17 thinking.

18 Q. Ms. Stigall, I'm going to show you  
19 Defendant's Exhibit D. These are items that the  
20 police found inside the Dodge Charger when it was  
21 searched. There's some business cards here for a  
22 boutique named Lavish Boutique. Can you see that  
23 on the screen?

24 A. Yes.

25 (Defendant's Exhibit No. D, Photo,

1 was identified.)

2 BY MS. BOOTH:

3 Q. Can you tell me are those business  
4 cards -- do they belong to you? Were they in  
5 your possession?

6 A. Yes.

7 Q. What is the Lavish Boutique?

8 A. It's a store.

9 Q. It's a store that you frequent?

10 A. Yes.

11 Q. And the cell phones in Defendant's  
12 Exhibit D, do you recognize any of these cell  
13 phones?

14 A. The black one on the bottom.

15 Q. The black one on the bottom?

16 A. Yes.

17 Q. Whose cell phone is this?

18 A. It's my son's.

19 Q. I'm also going to show you Defendant's  
20 Exhibit F. This has previously been identified  
21 as the backseat of the black Dodge Charger. Do  
22 you recognize it as that?

23 A. Yes.

24 (Defendant's Exhibit No. F, Photo,  
25 was identified.)

1 BY MS. BOOTH:

2 Q. And, Ms. Stigall, this grocery bag --  
3 this bag here in the back of the Charger -- do  
4 you recognize that bag?

5 A. Yes.

6 Q. How is it that you recognize that bag?

7 A. It's mine.

8 Q. What was inside that bag?

9 A. Underwear.

10 Q. That you were taking on your trip?

11 A. Yes. Some of it, yes.

12 Q. How long did it take for you to drive  
13 the Charger to get to The Pony in Illinois?

14 A. Probably 15 minutes.

15 Q. Is it fair to say that you were probably  
16 speeding?

17 A. Probably.

18 Q. When you got the to the parking lot of  
19 The Pony, what did you see?

20 A. I saw him sitting on the car talking to  
21 Shavion.

22 Q. Were you angry at that point?

23 A. Yes.

24 Q. Were you embarrassed?

25 A. Humiliated.

1 Q. Were you crying?

2 A. Yes.

3 Q. Did you get out of the Charger and  
4 confront Mr. Swan?

5 A. I got out of the car and screamed some  
6 things, and I got back in the car.

7 Q. And what is the other car that you're  
8 speaking of?

9 A. The rental car.

10 Q. And you drove away from The Pony?

11 A. Yes.

12 Q. And the car you were in was the rental  
13 car?

14 A. Correct.

15 Q. Did you stop to take your firearm out of  
16 the Charger and put it in the rental car?

17 A. No.

18 Q. Why not?

19 A. I wasn't thinking about it.

20 Q. When did you remember that you forgot  
21 your gun behind in the Charger?

22 A. When I got the call the next day that he  
23 had been arrested.

24 MS. BOOTH: I have nothing further  
25 right now, Your Honor.

1 | CROSS-EXAMINATION

2 | BY MS. WOODRUFF:

3 Q. Ms. Stigall, had you ever shot that gun  
4 before? Had you ever shot the gun before that  
5 you say belonged to you?

6 A. Yes.

7 Q. Where would you go shooting?

8           A. I would shoot in Poplar Bluff at a  
9 friend's house or, you know, just out in the  
10 country.

Q. How frequently would you go shooting?

A. Not very often. I work a lot.

13 Q. Where did you b

A. Walmart mostly.

Q. Do you have a favorite book?

16           A. And I like Federal because they're cheap  
17 at Cabela's.

18 Q. Is that what you usually loaded your gun  
19 with?

20                   A. It just depends on what I have of  
21 anything.

22 Q. And do you always load it in the same  
23 way?

## A What do you mean?

25 | 0 Do you always load your gun in the same

1 way?

2 A. Like take the clip out and put the  
3 bullets in?

4 Q. How many bullets does your magazine  
5 hold?

6 A. 16.

7 Q. 16 in the magazine?

8 A. Yes.

9 Q. Now, you indicated that you and Mr. Swan  
10 had dated on and off for years?

11 A. Yes.

12 Q. I'm sorry, when did you start dating?

13 A. 2013.

14 Q. And when did that relationship end?

15 A. Like March or April of 2014.

16 Q. But you were still in a relationship  
17 with him in 2018?

18 A. He went to prison.

19 Q. When did your most recent relationship  
20 with him end?

21 A. Recently.

22 Q. What's recently?

23 A. I'm going to say around March.

24 Q. And why did it end in March?

25 A. Because Shavion made a post.

1 Q. She posted something on social media you  
2 didn't like?

3 A. Yes.

4 Q. And so are you saying that you ended  
5 your relationship with Mr. Swan because of that?

6 A. It wasn't like we were in a relationship  
7 like a boyfriend, but, yes, pretty much.

8 Q. Do you have children with Mr. Swan?

9 A. I don't.

10 Q. Do you have any children?

11 A. I do.

12 Q. How many?

13 A. Three.

14 Q. How old are they?

15 A. 16, 15 and 11.

16 Q. And had Mr. Swan been involved in their  
17 upbringing?

18 A. Yes.

19 Q. Was he kind of a father figure to them?

20 A. He can be.

21 Q. And before March you were maintaining  
22 very regular contact with Mr. Swan, weren't you?

23 A. Yes.

24 Q. You were paying to do video visits,  
25 many; right?

1 A. Correct.

2 Q. You were also paying for many, many,  
3 many phone calls; is that correct?

4 A. Yes.

5 Q. You were putting money on his books?

6 A. Yes.

7 Q. And but it's your testimony today is  
8 that all ended in March?

9 A. No. I'm not saying that I don't talk to  
10 him or that I wouldn't help him out. I'm just  
11 saying it just kind of fell out in March.

12 Q. So you would help him out still?

13 A. If he needed to talk to his mom, yes, or  
14 if he calls my phone, sometimes I answer, and  
15 sometimes I don't.

16 Q. And is it fair to say -- obviously, I  
17 mean, you loved the man, you were involved with  
18 him for years; right?

19 A. Correct.

20 Q. And you want to help him out; is that  
21 fair to say? You just said you'd help him out;  
22 right?

23 A. We were talking about money on his books  
24 or phone calls.

25 Q. And that's helping him out?

1 A. Yes.

2 Q. Right?

3 Now, this story about this gun belonging  
4 to you, did you know that it was a stolen gun?

5 A. No.

6 Q. And you understand that it's a felony to  
7 possess a stolen gun?

8 A. I do understand that.

9 Q. And when Mr. Swan was arrested for -- in  
10 August -- I mean, he had been arrested in May for  
11 what you're saying was your gun; right?

12 A. Right.

13 Q. And when did you go to the police and  
14 tell them that was your gun?

15 A. I was advised not to.

16 Q. Who advised you of that?

17 A. His lawyer.

18 Q. Ms. Booth?

19 A. No.

20 Q. Who was that?

21 A. When the State -- when he was arrested,  
22 we hired a lawyer here on Independence,  
23 Stephen --

24 Q. And that lawyer told you not to go to  
25 the police?

1           A. He said if it comes to that, then we'll  
2 do that.

3           Q. So you did not go to the police and say,  
4 Hey, that gun he's locked up for belongs to me?

5           A. He told me not to.

6           Q. And you did not contact ATF to say that  
7 that gun belonged to you?

8           A. That's -- the feds weren't involved at  
9 that time.

10          Q. And you didn't contact the State  
11 prosecutor's office to say that gun belonged to  
12 you?

13          A. After his lawyer advised me not to, I  
14 did not, no.

15          Q. Now, that -- he didn't -- whoever that  
16 person was he didn't stay his lawyer for long,  
17 though, did he?

18          A. He did not.

19          Q. And, in fact, Mr. Swan was then arrested  
20 again for a different gun in August, wasn't he?

21          A. I'm not sure what he was arrested for.

22          Q. And you still didn't go to the police  
23 and say that gun belonged to me?

24          A. Well, when he got arrested the second  
25 time and he got a new lawyer, I did advise him

1 too.

2 Q. Did you call the police?

3 A. No. I asked his lawyer.

4 Q. Did you call the ATF?

5 A. I'm not a criminal lawyer. I don't know  
6 the specifics behind should I go and do that, so  
7 I did what the lawyers said.

8 Q. The first lawyer?

9 A. The first lawyer.

10 Q. So this entire time Mr. Swan is locked  
11 up for what you're saying is a gun that belonged  
12 to you?

13 A. My point exactly. I didn't agree with  
14 what his lawyer said, but I did it anyway because  
15 that's what he went to school for, so I figured  
16 that was right.

17 Q. So this lawyer who no longer represented  
18 him?

19 A. Correct.

20 Q. And you never told your story about that  
21 gun belonging to you to anyone other than,  
22 perhaps, Ms. Booth or his other lawyer until  
23 today; right?

24 A. Everybody knew it was my gun. I don't  
25 know what you mean. Did I tell the police? No.

1 Q. So everybody didn't know, did they,  
2 because the police didn't know, did they?

3 A. I don't know what the police knew.

4 Q. You didn't tell them, did you?

5 A. No.

6 Q. And the U.S. Attorney's Office didn't  
7 know because you didn't tell us, did you?

8 A. I figured telling his lawyer was enough.

9 Q. So you didn't advise anyone in law  
10 enforcement that that gun that he had been locked  
11 up for over a year actually belonged to you?

12 A. No. Not besides his lawyers.

13 Q. I understand that you were very upset  
14 when you caught Mr. Swan cheating on you and that  
15 you jumped in your car or his car actually and  
16 you drove to Illinois. Did you take your purse  
17 with you?

18 A. I didn't take my purse with me.

19 Q. But you took your gun?

20 A. I left the gun in the car. His mom  
21 doesn't like guns, so I never take the gun in the  
22 house.

23 Q. So you just keep it locked up in the  
24 car?

25 A. Correct.

1 Q. Where did you get the keys to the  
2 rental?

3 A. They were in the car.

4 Q. So the keys for the rental were just  
5 left in the ignition?

6 A. I don't know if you've ever -- you know,  
7 when they go hang out -- probably not. But  
8 everybody leaves their car on listening to music,  
9 so, yes, the keys were in the car.

10 MS. WOODRUFF: No further questions.

11 DIRECT EXAMINATION

12 BY MS. BOOTH:

13 Q. Ms. Stigall, are you lying today to help  
14 Barrett?

15 A. No.

16 Q. Truth be told is you still do care about  
17 him? That's true?

18 A. That's true.

19 Q. But are you going to lie today and  
20 jeopardize your freedom over it?

21 A. No.

22 Q. And you did come tell me the truth very  
23 early on, did you not?

24 A. Yes, ma'am.

25 Q. And I asked you if you'd be willing to

1 come to court and tell the truth?

2 A. Yes, ma'am.

3 Q. And I even told you it could expose you  
4 to criminal liability for prosecution in  
5 Illinois?

6 A. Yes, ma'am.

7 Q. And I gave you a subpoena to come and  
8 tell the truth?

9 A. Yes, ma'am.

10 Q. And that is why you're here?

11 A. Yes, ma'am.

12 THE COURT: Any other questions?

13 MS. WOODRUFF: No, sir. Thank you.

14 THE COURT: You may step down.

15 (Witness Excused.)

16 THE COURT: Call your next witness.

17 MS. BOOTH: Your Honor, I call  
18 Shavion Reed to the stand.

19 THE COURT: You may proceed.

20 SHAVION REED,

21 being produced and sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. BOOTH:

24 Q. Would you state your name for the jury.

25 A. Shavion Reed.

1 Q. And, Ms. Reed, how old are you?

2 A. 26.

3 Q. What is your job title and how are you  
4 employed?

5 A. I work for the State of Missouri as an  
6 eligibility specialist.

7 THE COURT: Please pull up the  
8 microphone so everybody can hear you.

9 BY MS. BOOTH:

10 Q. Ms. Reed, do you have any criminal  
11 convictions?

12 A. No, ma'am.

13 Q. And do you know Barrett Swan?

14 A. Yes, ma'am.

15 Q. What is your relationship with Mr. Swan  
16 at this moment?

17 A. He's my boyfriend.

18 Q. When did your relationship with Mr. Swan  
19 begin?

20 A. It began in November of 2016.

21 Q. And has it been a steady relationship  
22 from then all the way up until now?

23 A. No, ma'am.

24 Q. And why hasn't it been steady?

25 A. It's typical relationship problems.

1 Q. Was there some rockiness in the  
2 relationship because of other women?

3 A. Yes, ma'am.

4 Q. Do you recall seeing Barrett on Friday,  
5 May the 25th of 2018?

6 A. Yes, ma'am.

7 Q. Did you know at that time, Ms. Reed,  
8 that Barrett was seeing Ms. Ebony Stigall, dating  
9 her?

10 A. No, ma'am.

11 Q. Had you noticed a few things that made  
12 you suspicious that as to whether he was seeing  
13 another woman?

14 A. I wouldn't say it really made me  
15 suspicious, but I knew that I noticed that he  
16 wasn't driving his car lately.

17 Q. And that raised a red flag to you?

18 A. Yes, ma'am.

19 Q. Did he come to your house on Friday, May  
20 25th, 2018?

21 A. Yes, ma'am.

22 Q. Was he driving his car at that time?

23 A. No, ma'am.

24 Q. What car was Mr. Swan's car at that  
25 time?

1           A. What was his car at the time, or what  
2 was his car when he came to my home?

3           Q. What was the car that he was driving at  
4 that time? We'll get to the second question in  
5 just a moment.

6           A. I don't remember what kind of car it  
7 was, but I know it wasn't his.

8           Q. You're speaking of the car that he drove  
9 to your home on May the 25th?

10          A. Correct.

11          Q. Do you remember what color that car was?

12          A. I want to say silver, but I'm not quite  
13 sure.

14          Q. And back in May of 2018 the car that  
15 Mr. Swan owned, his personal car, what was it?

16          A. It was a 2016 Dodge Charger.

17          Q. And did he remain at your house on  
18 Friday, May the 25th, or did he leave?

19          A. He left.

20          Q. And thereafter did you go out on your  
21 own for the evening?

22          A. Yes, ma'am.

23          Q. And where did you end up? Was it a  
24 nightclub or a dance club?

25          A. I went to The Pony across the bridge.

1 Q. And now what happens at The Pony that  
2 people go there to socialize?

3 A. Just after hours after the bars close  
4 everybody goes down there to socialize.

5 Q. Did you go there with Mr. Swan?

6 A. No, ma'am.

7 Q. But at some point he came to The Pony;  
8 correct?

9 A. Yes, ma'am. I called him to come.

10 Q. You called him on the phone and asked  
11 him to come over and spend time with you?

12 A. Yes, ma'am.

13 Q. Did he want to come over at first?

14 A. No.

15 Q. Did he tell you why he didn't want to  
16 come over?

17 A. He said that he had been drinking.

18 Q. Were you able to prevail upon him to  
19 come over?

20 A. Yes, ma'am.

21 Q. And do you remember what time this was  
22 that he came over to The Pony?

23 A. No, ma'am.

24 Q. When he arrived to The Pony, do you  
25 remember what car he was driving?

1           A. He was in the same rental car that he  
2 was in earlier that day.

3           Q. Did that cause you any concern? Did  
4 that send up any red flags in your mind at that  
5 point?

6           A. Yes.

7           Q. And why is that?

8           A. Because I was in question as to why he  
9 wasn't driving his car.

10          Q. So did you and Mr. Swan socialize and  
11 talk to everyone for a while?

12          A. For a little bit, not very long.

13          Q. Now, truth be told you were drinking as  
14 well that night?

15          A. Yes, ma'am.

16          Q. But was your level of alcohol intake  
17 such that you can't remember important facts from  
18 that night?

19          A. I was drinking quite a bit, but I can  
20 remember certain things, but not accurately  
21 everything.

22          Q. And you remember for certain, though,  
23 when Mr. Swan arrived he wasn't in his black  
24 Dodge Charger?

25          A. Absolutely, because I was mad.

1 Q. At some point do you see the black Dodge  
2 Charger pull up on the parking lot of The Pony?

3 A. Yes, ma'am.

4 Q. And why does this stick in your mind?

5 A. Because I had noticed I hadn't seen him  
6 driving his car. And then when the car pulled  
7 around, I'm like I think that's his car, but I  
8 wasn't quite sure.

9 Q. At some point were you sure that it was  
10 Mr. Swan's black Dodge Charger?

11 A. Yes, ma'am.

12 Q. And you know for a fact that he wasn't  
13 driving it because he was already there with you?

14 A. Absolutely.

15 Q. Did you see who got out of the driver's  
16 seat of the black Dodge Charger when it pulled  
17 up?

18 A. At first I wasn't really paying  
19 attention. I just kind of blocked it out, and  
20 then eventually, yes.

21 Q. Who drove the black Dodge Charger to The  
22 Pony?

23 A. Ebony Stigall.

24 Q. And now are you friends with  
25 Ms. Stigall?

1 A. No, ma'am.

2 Q. Did you notice Mr. Swan and Ms. Stigall  
3 talk to each other?

4 A. Eventually, yes.

5 Q. How would you characterize their  
6 interaction with each other?

7 A. You could tell they were arguing.

8 Q. Could you hear what they were saying?

9 A. No.

10 Q. Did Ms. Stigall appear to be very upset?

11 A. Yes, ma'am.

12 Q. When you saw this interaction between  
13 Ms. Stigall and Mr. Swan, was it obvious to you  
14 that they were probably romantically involved and  
15 now you knew for sure?

16 A. At that point, yes, because I didn't  
17 understand why she would be driving his car if  
18 there wasn't anything going on.

19 Q. Did other people see this as well?

20 A. I don't know if they really was focused  
21 on what was going on like I was, but they could  
22 have. I'm not sure.

23 Q. Were you angry --

24 A. Yeah.

25 Q. -- when you first see this?

1 A. Yes.

2 Q. Were you embarrassed?

3 A. Very.

4 Q. At some point Ms. Stigall leaves?

5 A. I'm sorry?

6 Q. At some point Ms. Stigall leaves?

7 A. Yes, ma'am.

8 Q. Were you able to see her leave?

9 A. Yes, ma'am.

10 Q. Did she drive off in the black Dodge  
11 Charger?

12 A. No, ma'am.

13 Q. Did you see what car she drove off in?

14 A. She left in the rental.

15 Q. At this point did Mr. Swan try to  
16 approach and you try to smooth things out with  
17 you?

18 A. Yes. He had told me to go home, and he  
19 would be there.

20 Q. And how did you respond?

21 A. I was mad at him, I told him no.

22 Q. Did you just return back to speaking  
23 with your friends?

24 A. Yes, ma'am. And then I eventually left.

25 Q. Last summer on August 1st of 2018 were

1 you aware that Barrett was up in St. Louis?

2 A. Yes, ma'am.

3 Q. And did you receive a call from him in  
4 the evening hours -- I'm sorry, the late early  
5 morning hours of August the 1st?

6 A. Yes, ma'am.

7 Q. And what did he say to you at that time?

8 A. He had told me the police had pulled him  
9 over, and he was about to go to jail.

10 Q. Were you able to talk to him any more?

11 A. Not much.

12 Q. Did the phone just hang up, or did he  
13 say I'll call you back?

14 A. The phone hung up.

15 MS. BOOTH: Nothing further at this  
16 time, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. WOODRUFF:

19 Q. Ms. Reed, is it fair to say you don't  
20 know if he had a gun in his car or not on  
21 May 26th?

22 A. I know he didn't have a gun.

23 Q. How do you know that?

24 A. How do I know that he didn't have a gun?  
25 Because he was in a rental car.

1 Q. The Charger was his regular car?

2 A. Yes, ma'am.

3 Q. So you don't know if he had a gun in  
4 there already, do you?

5 A. I was in a relationship with him, and  
6 I've never seen him with a gun, so I don't  
7 believe that.

8 Q. You're saying you've never seen him with  
9 a gun?

10 A. Not around me or my child, correct.

11 MS. WOODRUFF: No further questions.

12 THE COURT: Any other questions?

13 MS. BOOTH: No, Your Honor.

14 THE COURT: You may step down.

15 (Witness excused.)

16 THE COURT: Call your next witness.

17 MS. BOOTH: Your Honor, my witness  
18 is entering the building at this time. May we  
19 take a brief recess, perhaps, a restroom break?

20 THE COURT: Okay. We'll take a  
21 short recess.

22 Remember the admonitions I've told  
23 you not to discuss the case. Go to the jury  
24 room, and we'll call you back shortly. Thank  
25 you.

1                   We'll be in recess.

2                   (Proceedings stood in temporary  
3 recess.)

4                   (Proceedings resumed in open court  
5 outside the presence of the jury.)

6                   MS. BOOTH: Judge Limbaugh, also I'd  
7 like to speak with you just a brief moment.

8                   THE COURT: Okay.

9                   (A discussion was held off the  
10 record.)

11                  THE COURT: Is that all you wanted?

12                  MS. BOOTH: That's all I wanted to  
13 ask you about, yes.

14                  (Proceedings stood in temporary  
15 recess.)

16                  (Proceedings resumed in open court  
17 outside the presence of the jury.)

18                  THE COURT: What is going on? Bring  
19 the jury in. What's the problem?

20                  MS. BOOTH: Oh, I'm sorry. My  
21 witness, I thought she was in the elevator.  
22 She's coming through security right now.

23                  THE COURT: Well, we're going to go  
24 ahead now. It was a five-minute break now --

25                  MS. BOOTH: I think in two minutes

1           she'll be here, but, sir, I defer to you.

2           THE COURT: Is she downstairs?

3           What's this -- where is she?

4           MS. BOOTH: She got lost.

5           THE COURT: How do you get lost?

6           MS. BOOTH: I don't know. I thought  
7           I made it very clear not to go to like the  
8           municipal court, or anything like that, but --

9           THE COURT: Well, is she in the  
10          building is what I'm saying?

11          MS. BOOTH: I believe that she is in  
12          the building coming through security.

13          (A discussion was held off the  
14          record.)

15          (Proceedings resumed in open court.)

16          THE COURT: Be seated, please.

17          MS. BOOTH: Your Honor, security has  
18          confirmed that our next witness is coming up on  
19          the elevator right now.

20          Your Honor, we call Tiara Thorpe to  
21          the stand.

22           TIARA THORPE,

23          being produced and sworn, testified as follows:

24          THE CLERK: Please have a seat in  
25          the witness stand. If you just go around here

1 and then go along the wall with the court  
2 security, he'll get you to the right seat.

3 THE COURT: You may proceed.

4 DIRECT EXAMINATION

5 BY MS. BOOTH:

6 Q. Ma'am, would you please state your name  
7 for the Court.

8 A. Tiara Thorpe.

9 Q. And, Ms. Thorpe, how old are you?

10 A. I'm 32.

11 Q. And, ma'am, how are you employed?

12 A. I am a home health worker agent, and I'm  
13 a musical engineer.

14 Q. And have you ever pleaded guilty to a  
15 criminal felony?

16 A. No, sir.

17 Q. Ms. Thorpe, do you know Barrett Swan?

18 A. Yes.

19 Q. And how long have you known Mr. Swan?

20 A. Three years now.

21 Q. I'm sorry, ma'am?

22 A. Three years now.

23 Q. And the nature of your relationship with  
24 Mr. Swan, are you friends, is it something  
25 romantic? How would you characterize it?

1 A. We're romantic.

2 Q. I'm sorry, ma'am?

3 A. We're romantic.

4 Q. And were you with Mr. Swan during the  
5 early morning hours of August 1st of 2018?

6 A. Yes.

7 Q. And how was it that you and Mr. Swan  
8 were together at that time?

9 A. We were leaving my birthday party. I  
10 was dropping him off. We were going to go indulge  
11 in adult activities.

12 Q. So you were out that night with Mr. Swan  
13 celebrating your birthday?

14 A. Yes, I was.

15 Q. And you were driving him back to where  
16 he was --

17 A. Yes, I was.

18 Q. Ms. Thorpe, I appreciate that you're  
19 testifying today, but let me ask the questions  
20 first, and then you answer. The court reporter  
21 is taking down everything that we're saying, so  
22 it has to be clear. I don't want to talk over  
23 you. Does that work?

24 A. I understand.

25 Q. Okay. So on August 1st were you driving

1 Mr. Swan back to where he was staying in  
2 St. Louis after your birthday?

3 A. Yes, I was.

4 Q. And at that time Mr. Swan didn't live in  
5 St. Louis; correct?

6 A. Correct.

7 Q. He lived in Cape Girardeau?

8 A. Yes.

9 Q. Do you know why he was in St. Louis at  
10 that time?

11 A. Visiting me.

12 Q. Was his father also in the hospital up  
13 in St. Louis?

14 A. Yes.

15 Q. Now, were only you and Mr. Swan in your  
16 vehicle?

17 A. Yes.

18 Q. And that vehicle was a red Ford Edge?

19 A. Yes.

20 Q. And, Ms. Thorpe, as you're driving, were  
21 you pulled over for a traffic violation?

22 A. I was.

23 Q. And was that in Florissant, Missouri?

24 A. It was.

25 Q. And did you pull over right away when

1 you saw the police officer behind you?

2 A. Yes, I did.

3 Q. Ms. Thorpe, did you have a firearm in  
4 the car with you at that time?

5 A. Yes, I did.

6 Q. And whose firearm was that?

7 A. It was mine.

8 Q. And where was the gun in the car when  
9 you were driving Mr. Swan on August the 1st?

10 A. It was in my armrest up under the  
11 compartment that's up under the compartment.

12 Q. And what type of firearm was it?

13 A. It was a Smith & Wesson MP model  
14 nine-millimeter.

15 Q. And, Ms. Thorpe, when had you purchased  
16 that firearm? When had you obtained it?

17 A. A couple years before.

18 Q. How did you obtain it?

19 A. I bought it.

20 Q. Where did you buy it?

21 A. Gander.

22 Q. And for our jurors who aren't from  
23 St. Louis, what is Gander?

24 A. That's -- it's like Pro Bass.

25 Q. Oh, like a Bass Pro Shop?

1 A. Or whatever, yeah.

2 Q. So Gander Mountain is like a  
3 sports shop?

4 A. It's where a sport -- and, yes, you go  
5 and purchase things like fishing rods, guns,  
6 ammunition, things like that.

7 Q. And you purchased your firearm at Gander  
8 Mountain?

9 A. Yes, I did.

10 Q. Did you have to fill out any paperwork,  
11 formal paperwork?

12 A. Yes, I did.

13 Q. Ms. Thorpe, why do you have a firearm?

14 A. Why wouldn't I?

15 Q. Had you been the victim of any crimes in  
16 St. Louis?

17 A. Yes, I had, several.

18 Q. Did you feel that you needed a firearm  
19 to protect yourself?

20 A. Of course. I live in St. Louis,  
21 Missouri.

22 Q. What are some of the crimes that you've  
23 been a victim of?

24 A. Burglary. I've been robbed. I've had  
25 everything you can think of to make happen one

1 person can do to another even with my children.

2 Q. Have you been car jacked?

3 A. Yes, I have, with a gun to my head with  
4 my three children in the car. I've had people  
5 climb through my window while I'm laying on the  
6 couch with my children in the house.

7 Q. So at the time of August 1st of 2018 did  
8 you always carry a firearm with you?

9 A. Yes, I have.

10 Q. Ms. Thorpe, did Mr. Swan know that you  
11 had a firearm in the car?

12 A. I can't say that he did, but the  
13 majority of everyone that's around me knows that  
14 I don't go anywhere without my gun. It's not  
15 like it's always out. I don't -- I'm not like a  
16 cowboy or anything, but, yes, I have my gun with  
17 me everywhere I go.

18 Q. So everyone who knows you you should  
19 know that?

20 A. The majority. Not everyone. I don't  
21 brag about it.

22 Q. So it's fair to say that you hadn't  
23 shown your firearm to Mr. Swan that night;  
24 correct?

25 A. Correct.

1 Q. And you hadn't said, Barrett, it's in  
2 the console; correct?

3 A. Correct.

4 Q. But Barrett knows you, and everyone that  
5 knows you knows you always have your firearm; is  
6 that fair to say?

7 A. That's fair to say.

8 Q. Ms. Thorpe, have you ever allowed  
9 Mr. Swan to have your gun or handle your gun?

10 A. No.

11 Q. When the officer came to your car window  
12 to advise you of the reason for the stop, he  
13 didn't ask you if you had a firearm in the car,  
14 correct?

15 A. Correct.

16 Q. And when the officer asked you for your  
17 identification, you immediately gave it to him?

18 A. Yes, I did.

19 Q. So you immediately cooperated?

20 A. Yes, I did.

21 Q. And the officer also asked for  
22 Mr. Swan's identifying information; correct?

23 A. Correct.

24 Q. And Mr. Swan didn't give the officer the  
25 correct name, did he?

1 A. No, he didn't.

2 Q. At that point did that surprise you?

3 A. No.

4 Q. Did you say to Mr. -- did you look at  
5 Mr. Swan odd to wonder why --

6 A. I asked him like, What's going on?

7 Q. At that time did he tell you he thought  
8 there probably was a federal warrant out for his  
9 arrest?

10 A. He looked at me, he said, He's going to  
11 coming back asking for the correct information.  
12 And when the officer came back, he gave the  
13 officer the correct name.

14 Q. So let's -- if we may slow down for a  
15 moment. When Mr. Swan gave the false information  
16 to the police officer, Mr. Swan said to you, The  
17 officer is going to end up coming back asking for  
18 my real name?

19 A. He didn't say that. Not verbatim, no.  
20 We kind of laughed it off. I looked at him like,  
21 Are you serious? He laughed it off. He rolled  
22 his eyes, and that was that. And then when the  
23 officer came back, he gave the officer the  
24 correct name.

25 He ran it. And then the officer

1 returned to the car and stated that he had an  
2 arrest -- well, he had a pending arrest or  
3 whatever because he was a fugitive.

4 Q. All right. When the police officer left  
5 the car for the first time to go back and check  
6 Mr. Swan's false name, you and Mr. Swan were left  
7 in the car unattended; correct?

8 A. Yes.

9 Q. And there was no police officer  
10 stationed outside the car to watch you?

11 A. Correct.

12 Q. And you were left to do whatever you  
13 wanted; correct?

14 A. Correct.

15 Q. Then when the officer came back to the  
16 car to ask for Mr. Swan's real information, he  
17 then left again and gave you additional time to  
18 be in the car alone with Mr. Swan; correct?

19 A. Yes.

20 Q. And there was no police officer  
21 stationed there to watch what you-all were doing  
22 in the car?

23 A. Correct.

24 Q. And this entire time, Ms. Thorpe, your  
25 firearm, was it ever out in the car?

1 A. No. It was like two seconds.

2 Q. I'm sorry, what was two seconds?

3 A. The time between the officer leaving and  
4 coming back. It was not a very long time, but,  
5 no.

6 Q. Your gun was always in the console of  
7 your car?

8 A. My gun was always put away.

9 Q. When the police officer came back and  
10 asked Mr. Swan to get out of the car, Mr. Swan  
11 didn't hesitate?

12 A. No.

13 Q. He got out of the car and cooperated  
14 with the police officer?

15 A. Immediately.

16 Q. And your firearm was never in Mr. Swan's  
17 possession?

18 A. No.

19 Q. And your firearm was not on the  
20 passenger seat when Mr. Swan got out of the car?

21 A. Absolutely not.

22 Q. And, Ms. Thorpe, at some point another  
23 police officer came and joined the traffic stop;  
24 correct?

25 A. Absolutely.

1           Q. And after Mr. Swan was arrested, you  
2 were allowed to go back to speak with Mr. Swan at  
3 the police car; correct?

4           A. Yes.

5           Q. And then at some point around this time  
6 did either of the police officers ask if you had  
7 anything illegal in the car?

8           A. The second officer who arrived at the  
9 scene was the one who actually asked, because  
10 Barrett had asked for me. I was sitting in the  
11 car after they had already placed him under  
12 arrest. Barrett was sitting in the backseat of  
13 the car. He asked for me, and the first officer  
14 arrived, came to the door and told me that he  
15 wanted me.

16           I got out of the car. I went and talked  
17 to Barrett for a couple of seconds. We kissed,  
18 we hugged, and I walked away. The second officer  
19 asked me to sit on the front of the car where I  
20 stood, and I talked to him.

21           We conversed over like a little bit of  
22 nothing. Actually, he asked me what we were  
23 doing, why was we out so late, did I know that  
24 Barrett was on the run, several things about  
25 Barrett.

1                   And then he asked me was there anything  
2 illegal in my car, and I told him at that time,  
3 yes, I have my gun, but it's not illegal. It was  
4 actually purchased by me. I told him where I  
5 purchased it from, and he asked me where he could  
6 find the gun, and I told him where to find it.

7                   Q. Okay.

8                   A. He went to search for it, and he could  
9 not find it.

10                  Q. All right. Ms. Thorpe, thank you.  
11 We'll go back over all of this. Thank you. But  
12 we'll take it in little pieces.

13                  So at some point the second officer  
14 asked you is there anything illegal in the car  
15 that we should know about; correct?

16                  A. Correct.

17                  Q. And you said there's nothing illegal,  
18 but I do have my firearm in the car?

19                  A. Absolutely.

20                  Q. And you told the second officer where  
21 your firearm was located?

22                  A. Yes, I did.

23                  Q. And you said that was in the console of  
24 your car?

25                  A. Yes.

1 Q. Now, did the second officer go to your  
2 car and try to find the firearm?

3 A. Yes, he did.

4 Q. Now, was he successful?

5 A. No, he was not.

6 Q. Was he able to find it?

7 So when he came back and said, I  
8 couldn't find it, does he ask you to explain more  
9 where it's located?

10 A. Yes, he did, and I did in detail. I  
11 explained to him exactly where he could find my  
12 gun and how he could get to it, and he still was  
13 unable to find my gun.

14 Q. All right.

15 A. So the initial officer on the scene, he  
16 went to look for it, and he was also unsuccessful  
17 with finding my gun but eventually found it.

18 Q. Well, let's stop for a moment. I would  
19 like to show the jury a video that we have made  
20 of showing how your console works --

21 A. Okay.

22 Q. -- so then we can speak to the jury more  
23 about that.

24 Ms. Thorpe, if you'll watch your video  
25 screen.

1 A. Where am I looking?

2 Q. Right in front of you. It's going to  
3 come up any moment now.

4 (A video was played for the jury at  
5 this time.)

6 BY MS. BOOTH:

7 Q. So, Ms. Thorpe, you've just had a moment  
8 to review this video; correct?

9 A. Okay.

10 Q. And this is a video that my investigator  
11 made when he came out to speak with you so you  
12 could show us where the firearm was located in  
13 your console; correct?

14 A. Correct.

15 Q. And just so we can be clear, Ms. Thorpe,  
16 if you will look at Defendant's Exhibit H. This  
17 is a picture of you sitting in your automobile;  
18 correct?

19 A. Yes, it is.

20 (Defendant's Exhibit No. H, Photo,  
21 was identified.)

22 BY MS. BOOTH:

23 Q. The automobile you were driving that  
24 night that you and Mr. Swan were stopped in  
25 Florissant, Missouri?

1 A. Yes.

2 Q. And these photos were also taken when my  
3 investigator came out to make the video; correct?

4 A. Yes, it was.

5 Q. Okay. So and the passenger seat that  
6 Mr. Swan was sitting in is where I'm placing my  
7 finger; correct? He was sitting in this  
8 passenger seat?

9 A. Uh-huh.

10 Q. All right. And then Defendant's Exhibit  
11 I, is this you sitting in the driver's seat?

12 A. Yes.

13 (Defendant's Exhibit No. I, Photo,  
14 was identified.)

15 BY MS. BOOTH:

16 Q. And we see here in this picture your  
17 console; correct?

18 A. Yes.

19 Q. Okay. And the night of the Florissant  
20 traffic stop the firearm was contained in this  
21 console?

22 A. Yes. In that console up under another  
23 piece that's inside of there.

24 Q. Okay. Let's see, ma'am. We'll look at  
25 Defendant's Exhibit J if that helps you better

1 explain. So this is a picture of your console  
2 open; correct?

3 A. Yes.

4 (Defendant's Exhibit No. J, Photo,  
5 was identified.)

6 BY MS. BOOTH:

7 Q. And this is your hand reaching in?

8 A. Uh-huh.

9 Q. And are you reaching in to grab a tray  
10 that lifts out?

11 A. Yes. There's an additional tray. You  
12 open my console, and there's a tray that lifts,  
13 and then there's about four and a half to five  
14 feet -- I mean five inches up under the tray.

15 Q. All right. This is Defendant's Exhibit  
16 K. Is this your console with that tray lifted  
17 out?

18 A. Yes.

19 (Defendant's Exhibit No. K, Photo,  
20 was identified.)

21 BY MS. BOOTH:

22 Q. So this picture is displaying just the  
23 bottom compartment of your console?

24 A. Uh-huh.

25 Q. And is this where the firearm is

1 located?

2 A. Yes, it is.

3 Q. And were these items -- were other items  
4 in your console as well?

5 A. Probably in addition to a whole bunch of  
6 other trash, but, yes.

7 Q. Okay. So the firearm was located in  
8 your console underneath a tray, and then it was  
9 in this compartment?

10 A. Yes.

11 Q. And the police officers had difficulty  
12 figuring out that tray or --

13 A. Yes. The second officer to arrive on  
14 the scene, he lifted the tray, and he could not  
15 find the gun. And then the initial officer, he  
16 went in there, and I don't know if he lifted the  
17 tray or whatever it was, but he couldn't find the  
18 gun as well, so he had to search several times.  
19 I had to explain to him in great detail as to  
20 where the gun was located.

21 Q. Yes, ma'am. And Defendant's Exhibit L,  
22 Ms. Thorpe, do you recognize this picture?

23 A. Yes. That is the gun that I own that I  
24 received when I purchase my gun.

25 (Defendant's Exhibit No. L, Photo,

1 was identified.)

2 BY MS. BOOTH:

3 Q. This is the box that your firearm came  
4 in?

5 A. Yes, it is.

6 Q. Now, this wasn't in the car for the  
7 Florissant traffic stop; correct?

8 A. No, it wasn't.

9 Q. You brought this box to show my  
10 investigator so he could take a picture?

11 A. When I met with him, I think his name  
12 was Detective Keys, or something like that.

13 Q. Yes, ma'am.

14 A. Yes, it is.

15 Q. And then we have Defendant's Exhibit M.  
16 And can you tell the jury what this is, what this  
17 is a picture of?

18 A. That's the label that was placed on my  
19 gun when I purchased it.

20 (Defendant's Exhibit No. M, Photo,  
21 was identified.)

22 BY MS. BOOTH:

23 Q. So this is the label on the box which  
24 indicates --

25 A. The serial number.

1 Q. -- the serial number, the serial number  
2 of your firearm; correct?

3 A. Yes.

4 Q. And then Defendant's Exhibit N, can you  
5 tell the jury what this is?

6 A. That is the use pamphlet, and then that  
7 is also the pamphlet that lets me know more about  
8 the gun that I purchased.

9 Q. So you kept all the contents of the box?

10 A. Yes, I did.

11 Q. I think we even have like a safety lock  
12 here that came with the firearm?

13 A. Yes.

14 Q. And you still have this box?

15 A. Yes, I do.

16 Q. Ms. Thorpe, when the police officer took  
17 the firearm out of your console, you made it  
18 clear that that was your firearm?

19 A. Oh, yes. I was extremely upset, and I  
20 was asking him and probably screaming at him at  
21 the same time. I couldn't understand why he was  
22 trying to retain my gun. Like why would you be  
23 taking my gun? That's mine. I purchased it.  
24 It's legal. And I abide by every rule possible.  
25 I even purchased a book stating the Missouri law

1 of having a handgun. I had no reason to have my  
2 gun taken from me. I was told by an officer of  
3 the law to go and purchase the gun because of  
4 I've had so many incidents during one of those  
5 times.

6 Q. Yes, ma'am. And did you try to call the  
7 police station after your gun was taken from you?

8 A. Yes, I did immediately, August 1st. I  
9 think Barrett was locked up July 31st going into  
10 August 1st. I'm not sure of the exact time;  
11 sometime between like 3:00 or 4:00 a.m. So  
12 immediately a couple hours later when I woke up I  
13 called everywhere trying to figure out what was  
14 exactly going on with him and where my gun was  
15 located.

16 Q. And was anyone able to help you?

17 A. No. They acted as if they had  
18 absolutely no idea what was going on with my gun.  
19 They hadn't heard of my gun. And they weren't  
20 really speaking on Barrett Swan's case.

21 MS. BOOTH: Your Honor, my direct of  
22 Ms. Thorpe is complete.

23 THE COURT: Cross-examination.

24 MR. SORRELL: Thank you.

25 CROSS-EXAMINATION

1 BY MR. SORRELL:

2 Q. Ms. Thorpe, I believe you said that on  
3 August 1st that you were celebrating a birthday  
4 party that night; is that right?

5 A. Yes. August the 1st.

6 Q. Okay. I believe you described it as you  
7 were engaged in adult activities. Is that what  
8 you said?

9 A. Yes. I said, I was getting ready to  
10 drop Barrett off to a hotel room, and we were  
11 going to engage in adult activities.

12 Q. Oh, okay. And so where had you been the  
13 night before that you got stopped?

14 A. Prior to the hours?

15 Q. I'm sorry?

16 A. You're saying where were we coming from?

17 Q. Yes, ma'am.

18 A. We were out celebrating.

19 Q. Yeah, but what club had you been to?

20 A. We had went to a friend of mine's bar.

21 I can't think of the name of it.

22 Q. You don't know the name of the place  
23 that you were?

24 A. No, I can't think of the name of it.

25 Q. Illinois or Missouri?

1           A. It's right off of Newstead and in  
2 between like Natural Bridge and St. Louis Avenue.

3           Q. Okay.

4           A. It's closed down as of now, but that's  
5 where we were leaving.

6           Q. All right. Did you take your gun  
7 inside?

8           A. No, I didn't.

9           Q. You left it in the car?

10          A. Yes, I did.

11          Q. And you showed a photograph of the --  
12 your gun in your car where you keep it at the  
13 bottom of the console; is that right?

14          A. Correct.

15          Q. And was all that stuff in the console at  
16 the time that you had the gun in the console that  
17 night on August 1st?

18          A. Yes. It was a little bit more too.

19          Q. And so you kept the gun basically  
20 because you're afraid of being accosted?

21          A. Yes.

22          Q. So how is that readily available to you  
23 if you've got to dig through all of that?

24          A. I really don't have to. I know where  
25 it's at. I'm the only person who knows where it

1       is, so when I pull it out, I know exactly how to  
2 get to it.

3           Q. But it seems to me like if you want it  
4 readily available, you've got to go through a lot  
5 of stuff to get to it.

6           A. Yes. It's not what it seems like. I  
7 know how to get to it.

8           Q. But you've got to pull a tray up to get  
9 to it?

10          A. Yes, I do.

11          Q. All right. And you would have time to  
12 do all that --

13          A. Yes, I do.

14          Q. -- if somebody had a gun to your hand --

15          A. Yes.

16          Q. -- to your head?

17          A. Yes.

18          Q. All right. Now, you were talking about  
19 this stop, and I think the way you described it  
20 is that --

21          A. It was bogus.

22          Q. I'm sorry?

23          A. It was bogus.

24          Q. Oh, right?

25          A. It was totally illegal, everything about

1 it, and they lie about it.

2 Q. Well, I'd like you to explain that.

3 A. Okay. So this is the thing. They said  
4 that I stopped -- or I didn't stop at a stop  
5 sign, and then I received several tickets, but  
6 when I went to court, I had proof of everything  
7 that the officers said that I didn't have. I had  
8 everything, and they threw that completely out  
9 because I had everything. He said I didn't have  
10 registration. I had that. He said I didn't have  
11 insurance. I had that. He said that there was a  
12 stop sign, and there was not a stop sign.

13 So everything that -- every ticket that  
14 I received the officer and the judge or the  
15 lawyer that was in front of the judge at the time  
16 when I went to court he threw that out.

17 Q. And so your car had dealer plates on it,  
18 didn't it?

19 A. Yes, it did.

20 Q. And --

21 A. My car had dealer plates on it, because  
22 when I purchased my car, I purchased a used  
23 vehicle, and the used vehicle had been purchased  
24 from another wholesaler. And in the State of  
25 Missouri you can't purchase a vehicle from a

1       wholesaler without a certain -- like it has to go  
2       from one thing to another, and they did not do  
3       that process.

4                   So when I went down to the city hall to  
5       get my car registered, they didn't do that  
6       properly. So the Schicker Ford, whomever I  
7       purchased my car from, they allowed me their  
8       plates until they figured out their mishap.

9                   Q. All right.

10          A. That is the reason for my -- me having  
11       the dealer plates.

12          Q. And you bought the car in, what,  
13       February?

14          A. Yes, I did.

15          Q. And you were stopped in August?

16          A. Yes.

17          Q. And you still hadn't got plates yet?

18          A. Correct. They hadn't figured that out  
19       by then.

20          Q. You still hadn't paid the sales tax on  
21       the car, or anything like that?

22          A. No. I had paid the sales tax. I hadn't  
23       figured out the getting the stuff together. As of  
24       now, yes, I have plates on my car.

25          Q. All right.

1 A. If that's what you're asking.

2 Q. Since then you've acquired plates?

3 A. Oh, yes.

4 Q. Okay.

5 A. The plates were on there immediately  
6 once they gave me my title to my vehicle.

7 Q. Okay. And how long do you think this  
8 whole traffic stop took from the time it started?

9 A. It took approximately no more than 15,  
10 20 minutes.

11 Q. All right. Now, let me show you a copy  
12 of a radio log that's already been introduced  
13 into evidence showing that the first dispatch  
14 call went out for the stop at 3:21 and that the  
15 officer left at 3:49. Does that sound about  
16 right to you?

17 A. 28 minutes? I said 20 to 28?

18 Q. Yes. Is about that right?

19 A. That's about right.

20 Q. Okay. Because the times are important,  
21 aren't they?

22 A. Yes.

23 Q. The sequence of events?

24 A. Well, yeah, like what they report in  
25 between is more important.

1 Q. All right. We'll get to that.

2 A. Okay.

3 Q. So if I understand it right, you had  
4 this stop, and then the officer came up, and he  
5 only asked you for your ID first?

6 A. Correct.

7 Q. That's what you say. Now, when did the  
8 officer give you the traffic tickets?

9 A. He gave me the traffic tickets  
10 approximately I would say like 13 minutes after.

11 Q. I'm sorry?

12 A. He asked me for my information. I gave  
13 him everything. He went back to the car. He ran  
14 everything.

15 He came back, and he asked Barrett for  
16 his information. He went back to the car. And  
17 then he came up and probably gave me the tickets  
18 then.

19 Q. And then did you tell him -- I thought  
20 that you had made a statement that you got your  
21 ticket before the officer asked for Mr. Swan's  
22 ID?

23 A. I'm not sure exactly, but I believe that  
24 he had -- he gave me the tickets before. I'm not  
25 sure exactly.

1 Q. Did you make a statement to Officer  
2 Eggers when you talked to him that you had gotten  
3 your --

4 A. I just stated I'm not sure exactly.

5 Q. Well, let me ask the questions first.  
6 You can't answer it until you know. Did you  
7 ask -- make a statement to Mr. Eggers that you  
8 had -- that you had gotten your tickets before  
9 the officer asked Mr. Swan for his name?

10 A. Again, I'm not sure exactly if it was  
11 before or after they had already handcuffed  
12 Barrett and put him in the backseat.

13 Q. Well, let me just put your words to you  
14 and see if you can remember it better.

15 (Audio was played for the jury at  
16 this time.)

17 BY MR. SORRELL:

18 Q. So is it fair to say that that's the  
19 sequence of events?

20 A. That's to say that I done told the story  
21 about five times. Between there and now that's  
22 been a year ago.

23 Q. Well, which is the more accurate  
24 version?

25 A. Exactly what I'm telling you now and

1 what I told the officer then.

2 Q. That you got the tickets first?

3 A. I gave it to him either five seconds  
4 before or five seconds after.

5 Q. I'm sorry. You gave --

6 A. I gave the officer my information, and I  
7 received the tickets five seconds before or five  
8 seconds after. It took five seconds.

9 Q. Okay. Right about the time that  
10 Mr. Swan -- that the officer asked Mr. Swan for  
11 his identification?

12 A. I'm pretty sure I had already -- I'm  
13 pretty sure I had already received the tickets by  
14 the time they asked Mr. Swan for his information.

15 Q. Because usually the stop is over at that  
16 point?

17 A. Correct.

18 Q. Okay. All right. Now, then I believe  
19 you also described that it couldn't have been a  
20 long time between the asking for Mr. Swan's real  
21 name and his arrest. I think you described it as  
22 two seconds?

23 A. Something of that sort.

24 Q. Would you switch back over to the  
25 monitor, please.

1                   Now, the County's records at least show  
2 that the officer started asking Mr. Swan about  
3 his identity at 3:30?

4                   A. Uh-huh.

5                   Q. And then discovered the warrants and  
6 then found out about the existence of the warrant  
7 at 3:32?

8                   A. That's two minutes.

9                   Q. I don't -- does that -- well, you said  
10 two seconds, or maybe you were just using that  
11 term inaccurately?

12                  A. So maybe it's two seconds.

13                  Q. It doesn't make any difference?

14                  A. It was still they were unlawful with  
15 everything because I provided everything that he  
16 needed, and everything was accurate.

17                  Q. So we can agree then at least you got  
18 the tickets either right before or right at the  
19 same time that Mr. Swan --

20                  A. We can also agree that the officer had  
21 everything that he asked for, and he was still  
22 inaccurate on his -- everything that he did  
23 afterwards.

24                  Q. Let me show you what I believe are your  
25 traffic tickets that were issued that night. Do

1 you recognize those?

2 A. Uh-huh. I have them in my console as  
3 well.

4 Q. All right. And does that look like the  
5 same kind of paper that you received that night?

6 A. It does.

7 Q. I'm going to mark this as No. 18.

8 MR. SORRELL: And I'll offer that,  
9 Your Honor.

10 (Government's Exhibit No. 18,  
11 Traffic Tickets, was identified.)

12 MS. BOOTH: No objection.

13 THE COURT: It's admitted.

14 (Government's Exhibit No. 18,  
15 Traffic Tickets, was received.)

16 BY MR. SORRELL:

17 Q. Now, do you see the line here -- or the  
18 form sets out all of your information; is that  
19 right?

20 A. Correct.

21 Q. It also sets out the day the ticket was  
22 issued, August 1st, 2018?

23 A. Yes.

24 Q. It also sets out the time the ticket was  
25 issued, doesn't it?

1           A. That says 6 o'clock. Is that 6 o'clock  
2 in the morning?

3           Q. That's 3:44 in the morning.

4           A. Oh, okay. Yeah. That's that time.  
5 That time they may be correct.

6           Q. And the radio log shows the stop ended  
7 at 3:49. So you got the tickets right at the  
8 very end of the stop; is that fair?

9           A. Absolutely incorrect.

10          Q. And what's incorrect about it?

11          A. Because Barrett was in the car with me  
12 when I received the tickets.

13          Q. All right. And so the radio logs are  
14 wrong?

15          A. Yes.

16          Q. And the officers that called back and  
17 forth that we've already heard testify --

18          A. Absolutely incorrect.

19          Q. -- they just made up the log?

20          A. Yes, they did.

21          Q. And they made up the calls?

22          A. Yep.

23          Q. They were able to simultaneously --

24            MR. TILSEN: Objection, this is  
25 argumentative. They can be mistaken as well

1 as --

2 THE COURT: Overruled.

3 MR. TILSEN: This is improper  
4 cross-examination.

5 THE COURT: Overruled.

6 BY MR. SORRELL:

7 Q. So is it your suspicion then the  
8 officers made up the radio log?

9 A. Yes.

10 Q. Okay. All right. Well, I mean, I just  
11 want to be clear what you're saying.

12 A. I'm telling you that I was sitting in  
13 front of the car when the officers completed -- I  
14 sat outside the car for at least about 5 minutes  
15 after everything had taken place. I don't  
16 believe the officers called it in until after  
17 Barrett was placed inside of the car.

18 Q. Okay. All right. Now, then, so at some  
19 point in time the officer asked Mr. Swan for his  
20 name, and Mr. Swan gives a fake ID?

21 A. Absolutely correct.

22 Q. And so did you say, Hey, officer, that's  
23 not his name?

24 A. I didn't say anything.

25 Q. You just let that go?

1 A. Yes, I did.

2 Q. And then so you would have been okay  
3 then if Mr. Swan would have --

4 A. No. I talked that over with him.

5 Q. So after that then the officer came  
6 back --

7 A. Yes.

8 Q. -- and asked for Mr. Swan's real name?

9 A. Yes, he did.

10 Q. And after that the officer had to go  
11 back and check that name; is that fair?

12 A. Yes. And that didn't take any time.

13 Q. Did it take several minutes?

14 A. I would say a minute or so, yes.

15 Q. From say around 3:30 until 3:33?

16 A. Approximately. I wasn't looking at my  
17 watch.

18 Q. All right. Now, the officer also shows  
19 that he's calling in a number for a gun that was  
20 found three and a half minutes later. Do you see  
21 that?

22 A. Uh-huh.

23 Q. Is that when all that happened?

24 A. That's exactly what I just told you.

25 Q. That's -- that all happened that you

1 just told about that -- that the officer put  
2 Mr. Swan in the car, that he was doing all of his  
3 work, the second officer is talking to you, you  
4 tell him about the gun being in the car, the  
5 first officer searches, the second officer  
6 searches. They can't find the gun. You have to  
7 tell them again. And then is when the gun is  
8 discovered?

9 A. Exactly.

10 Q. Okay.

11 A. So are you trying to say what?

12 Q. It doesn't seem to be enough time.

13 A. Well, that's exactly what happened.  
14 Barrett was already in the backseat of the car  
15 when I told the officers where the gun was  
16 located. I told one officer. He went in looking  
17 for it. He couldn't find it. I told him again.  
18 He went and searched for it. He did not find it.

19 The initial officer on the scene went  
20 and searched for it. He couldn't find it. He  
21 went and looked again. Then he found it, placed  
22 his gloves on -- grabbed a bag, put his gloves on  
23 and then placed my gun in a bag, because I  
24 explained to him in great detail where he could  
25 find my gun.

1           Q. Okay. But the officer goes on then to  
2 say -- to talk about all the other things he's  
3 doing and calls back at 3:36:41.

4           A. So he stated that he was standing on the  
5 side talking to Barrett while I was talking to  
6 the second officer to arrive on the scene, and we  
7 were talking about me licking on a lemon because  
8 it was my birthday and me being sick. That's  
9 what me and the initial officer that asked me  
10 about my gun, which was the second officer to  
11 arrive on the scene, that's what we were talking  
12 about.

13          Q. But the officer is calling back every  
14 minute or so?

15          A. The initial officer to arrive on the  
16 scene hadn't asked me for my gun. The second  
17 officer was the one to ask me if there was  
18 anything illegal in the car.

19          Q. You said the first officer is the one  
20 that found the gun, didn't you?

21          A. Yes. That's because I explained it to  
22 officer who was the one that I was talking to,  
23 which was the second one to arrived on the scene.  
24 He asked me if there was anything illegal in the  
25 car, and I said, no, there's nothing illegal, but

1 my gun is in the car.

2 He asked me where was my gun. I  
3 explained to him where my gun was. He went and  
4 looked. He said, I cannot find it. He went and  
5 looked again. He could not find it. I had  
6 explained it to him.

7 So the officer that was standing on the  
8 side of the car talking to Barrett left Barrett  
9 and went and searched my car.

10 Q. I understand your story.

11 A. And he couldn't find it. And then I  
12 explained it to him. And then he went and looked  
13 again. And when he found it, he went and put his  
14 gloves on, and then he grabbed the bag and then  
15 put my gun in there.

16 Q. So but if you look on the radio log,  
17 you'll see that the first officer --

18 A. That's incorrect.

19 Q. So, again, the radio log is entirely  
20 wrong?

21 A. Yes. You guys are false all the time.

22 Q. Okay.

23 A. That's nothing new.

24 Q. Okay.

25 A. You fix things to make it look good for

1 you.

2 Q. Okay. And you wouldn't do that?

3 A. No, I wouldn't.

4 Q. Okay.

5 A. I'm going to tell you the truth.

6 Q. And you were --

7 A. I have nothing to lose or nothing to  
8 gain from this.

9 Q. And when Mr. Swan gave the false name,  
10 you didn't -- you didn't step up and say --

11 A. Me and Mr. Swan talked about that.

12 Q. Well, but you didn't tell the officer?

13 A. And he gave the real name once me and  
14 Mr. Swan talked about that.

15 Q. All right. And so if I understand it  
16 correctly, your position is that the time on the  
17 ticket is wrong, the radio logs are wrong, and  
18 the calls are incorrect?

19 A. I'm saying the stop was totally bogus.  
20 The officers were incorrect, and we gave them  
21 everything that they asked for every time they  
22 asked for it. There was no problem between me  
23 and the officers, none between Barrett and the  
24 officers. It was a -- it was actually an okay  
25 stop considering the circumstances.

1 Q. Now, I believe you told Mr. Eggers that  
2 you had two magazines for that gun?

3 A. Yes, I do.

4 Q. The officers only seized the one in the  
5 pistol?

6 A. Yes, they did.

7 Q. Where is the second one?

8 A. In my car where they left it loaded.

9 Q. It was -- it was in the console?

10 A. It was in the car loaded, and they left  
11 it.

12 Q. In the place where you just described?

13 A. Yes.

14 Q. Okay. So you're just saying the  
15 officers looked through that --

16 A. Exactly.

17 Q. -- and left a loaded magazine in your  
18 car?

19 A. Yes. That's exactly what I'm telling  
20 you.

21 Q. All right. You still got that magazine?

22 A. Yes, I do.

23 Q. Okay. Now, when did you first meet  
24 Mr. Swan?

25 A. I met him probably November, October a

1 couple years prior to.

2 Q. Okay. Is that sometime in the middle of  
3 2017, do you think?

4 A. '17, '16, yeah.

5 Q. And when did you purchase the gun that  
6 was found in the car?

7 A. I purchased the gun prior to me knowing  
8 him.

9 Q. All right. About when did you purchase  
10 the gun?

11 A. I purchased it in February or March.

12 Q. Of what year?

13 A. I'm not sure exactly.

14 Q. All right.

15 A. It was way before I knew Mr. Swan.

16 Q. Well, the gun trace says you bought it  
17 on March the 3rd --

18 A. Okay.

19 Q. -- of 2017?

20 A. That would be exact then. That was  
21 prior to me knowing Mr. Swan.

22 Q. That's about the time that you met  
23 Mr. Swan?

24 A. No. I said that would be before I met  
25 Mr. Swan.

1 Q. How much before?

2 A. I didn't know him until November or  
3 October of that year, so give or take, what, nine  
4 months.

5 Q. Did you tell Officer Eggers you met  
6 Mr. Swan about in the middle of 2017? You said  
7 about a year before this incident took place?

8 A. I told Mr. Eggers what exactly?

9 Q. That you met Mr. Swan about a year  
10 before this incident took place.

11 A. I purchased my gun in March. I met him  
12 in October or November. What are you saying?  
13 What are you not understanding?

14 Q. I'm just wanting to know exactly when  
15 you met Mr. Swan?

16 A. I just told you.

17 Q. All right. And so you're -- so it was  
18 within a few months of you meeting Mr. Swan?

19 A. No. That was clearly about nine months  
20 if I purchased it in March and I met him in  
21 October or November.

22 Q. All right. Let's go at it this way.

23 Did you tell Officer Eggers that you met Barrett  
24 Swan in the middle of 2017?

25 A. I could never put an exact date on the

1 time that I met him.

2 Q. Well, we can play it back to you if you  
3 need it.

4 A. You can. I recall that it was being  
5 recorded.

6 Q. So but did you tell him that?

7 A. I'm telling you what I'm telling you  
8 now. I'm telling you the exact same thing that I  
9 told Mr. Eggers.

10 Q. All right. We'll do it this way.

11 (An audio recording was played for  
12 the jurors.)

13 BY MR. SORRELL:

14 Q. Does that remind you a little bit about  
15 what you said?

16 A. That was an incident. So play the  
17 entire recording because we were talking about me  
18 purchasing my gun and what required me to  
19 purchase my gun, not when I purchased my gun. We  
20 were talking about an incident that occurred,  
21 what made me purchase my gun. Play the entire  
22 recording. Don't play a little bit.

23 Q. How long have you known Barrett? I had  
24 known Barrett for --

25 A. Play the entire recording. You're

1 playing a little bit.

2 Q. Well, just answer the question.

3 MR. TILSEN: Objection. Let her  
4 answer the question, Your Honor.

5 THE COURT: Overruled.

6 MR. SORRELL: Ms. Booth is the  
7 person for this witness, not Mr. Tilsen.

8 THE WITNESS: You played a little  
9 bit. Play the entire recording. Play exactly  
10 the question that was asked prior to me answering  
11 that question.

12 MR. SORRELL: You don't get to do  
13 that. So --

14 THE WITNESS: Oh.

15 MR. SORRELL: So --

16 THE WITNESS: So you get to halfway  
17 play the truth? Because he asked me why I  
18 purchased the gun, and I explained to him what  
19 made me purchase the gun.

20 THE COURT: Ma'am, stop. He asks  
21 the questions.

22 THE WITNESS: Even though he's being  
23 wrong?

24 MS. BOOTH: Just answer the  
25 questions.

1 BY MR. SORRELL:

2 Q. So did you know Mr. Swan a year before  
3 August 1st?

4 A. Yes.

5 Q. And that's a few months of the time that  
6 you bought the gun?

7 A. Incorrect.

8 Q. All right. And why is it incorrect?

9 A. Because I purchased the gun two years  
10 prior to then.

11 Q. All right. If you knew Mr. Swan a year  
12 before August 1st, that would have been  
13 August 1st of 2017?

14 A. Correct.

15 Q. And you bought this gun on August the --  
16 or March the 3rd of 2017?

17 A. Incorrect.

18 Q. You didn't buy it on March 3rd?

19 A. I bought the gun August -- you said I  
20 purchased the gun when? Right. Yeah.

21 Q. Hang on just a second. Do you see this?  
22 Can you see where my ink pen is pointing, ma'am?

23 A. Three?

24 Q. March 3rd, 2017?

25 A. No. I need you to correct that. Where

1 is your ink pen pointed at?

2 Q. Well, what I pointed to is the purchase  
3 where it says purchase date. Do you see that?

4 A. 3/03/2017.

5 Q. All right. Is that the date you  
6 purchased the gun?

7 A. Correct.

8 Q. All right. So it's within a few months  
9 of the time that you met Mr. Swan?

10 MR. TILSEN: I object to the form of  
11 the question.

12 MR. SORRELL: Mr. Tilsen can't make  
13 an objection.

14 THE COURT: Overruled.

15 BY MR. SORRELL:

16 A. And you're asking me again when did I  
17 meet Mr. Swan?

18 Q. Yes.

19 A. I met him in October of that year.

20 Q. All right. Have you ever bought any  
21 other firearms?

22 A. No.

23 Q. Either before or since?

24 A. No.

25 MR. SORRELL: That's all I have.

1 Thank you.

2 THE WITNESS: So what are you  
3 saying?

4 DIRECT EXAMINATION

5 BY MS. BOOTH:

6 Q. Ms. Thorpe, the traffic stop in  
7 Florissant took how long from start to finish?

8 A. 20 minutes that I would say.

9 Q. And that's easy to remember; correct?

10 A. Yeah.

11 Q. But the time when a ticket was given or  
12 the exact time the police officer got Barrett's  
13 false information, do you know all those exact  
14 times?

15 A. No. I can't remember the time when  
16 everything happened. No. I wasn't looking at my  
17 watch.

18 Q. That firearm, was it out in the car in  
19 Barrett's possession?

20 A. No.

21 Q. And, Ms. Thorpe, I know you care for  
22 Mr. Swan; is that fair to say?

23 A. Yes.

24 Q. Would you lie for him today?

25 A. No.

1 Q. And on June the 14th did an ATF agent  
2 come out and speak to you?

3 A. June 14th?

4 Q. Yes, ma'am.

5 A. That's the Friday before I went on my  
6 vacation. Yes. He was extremely disrespectful.

7 Q. And that would be Agent Eggers?

8 A. Yes, that's correct.

9 Q. But you told him what you testified here  
10 to today; correct?

11 A. Correct.

12 Q. You didn't tell him, I don't want to  
13 talk to you?

14 A. No. I invited him to my space exactly  
15 where I was.

16 Q. And you spoke to him willingly?

17 A. Yes, I did.

18 Q. Did you have to?

19 A. No, I didn't.

20 MS. BOOTH: Judge, I have nothing  
21 further.

22 MR. SORRELL: No, sir.

23 THE COURT: You may step down.

24 (Witness Excused.)

25 THE COURT: Call your next witness.

1 MS. BOOTH: Your Honor, I call  
2 Mr. Swan to the stand.

3 BARRETT SWAN,  
4 being produced and sworn, testified as follows:

5 THE COURT: You may proceed.

6 DIRECT EXAMINATION

7 BY MS. BOOTH:

8 Q. Can you please state your name for the  
9 record.

10 A. Barrett Swan.

11 Q. And, Mr. Swan, we finally get to hear  
12 from you; correct?

13 A. Yes, ma'am.

14 Q. Mr. Swan, how old are you?

15 A. 35.

16 Q. And you are a convicted felon?

17 A. Yes, ma'am.

18 Q. And you know that?

19 A. Yes, ma'am.

20 Q. And can you tell the jury do you have  
21 any -- you have a prior conviction for felon in  
22 possession of a firearm?

23 A. Yes, ma'am.

24 Q. And --

25 THE COURT: Why don't you pull the

1 microphone up.

2 BY MS. BOOTH:

3 Q. And you pled guilty to that offense  
4 when?

5 A. I pled guilty for it in 2006.

6 Q. And that was here in federal court?

7 A. Yes, ma'am.

8 Q. And that was Count 1; correct?

9 A. Yes, ma'am.

10 Q. But there were two other counts there,  
11 weren't there?

12 A. Yes, ma'am.

13 Q. And tell the jury what those were.

14 A. Distribution of a controlled substance.

15 Q. And your other felony convictions, what  
16 are those for the jury?

17 A. I have a previous possession of a  
18 controlled substance, and I have a DWI also.

19 Q. And, Mr. Swan, the previous possession  
20 of a controlled substance that was in the 2003?

21 A. Yes, ma'am.

22 Q. And your DWI was in 2011?

23 A. Yes, ma'am.

24 Q. And that was a felony DWI?

25 A. Yes, ma'am.

1 Q. And then you also have a felony  
2 receiving stolen property in 2006: Do you  
3 recall?

4 A. Yes. That was also the gun -- the same  
5 gun that I was charged with that was stolen, so  
6 they charged me with receiving stolen property  
7 also.

8 Q. All right. So those offenses happened  
9 around age 19 to 22?

10 A. 19 to 21, yes, ma'am.

11 Q. And, of course, you're 35 now?

12 A. Yes, ma'am.

13 Q. So time has passed?

14 A. Yes, ma'am, a lot.

15 Q. But the felony DWI was in 2011?

16 A. Yes, ma'am.

17 Q. So, Mr. Swan, you know you can't be in  
18 possession of firearms?

19 A. Definitely.

20 Q. That is clear?

21 A. Yes, ma'am.

22 Q. On May 25th of 2018 were you in  
23 possession of Ebony's firearm knowingly?

24 A. No.

25 Q. Let's go back to that day. You had

1 plans with Ebony to go to Indiana?

2 A. Yes, ma'am.

3 Q. And on that day, May 25th, what car were  
4 you driving?

5 A. A rental car.

6 Q. And Ebony had your Dodge Charger?

7 A. Yes, ma'am.

8 Q. And was that unique for her to drive  
9 your Charger?

10 A. Unique? No. If I parked it in front of  
11 her car, she just takes mine. I would wake up,  
12 and it would be gone.

13 Q. Now, at that time did you know that  
14 Ebony was a firearm possessor?

15 A. Yes, ma'am.

16 Q. And you had seen her firearm at some  
17 point?

18 A. I have seen it previously. Like, you  
19 know, I don't -- I made it very clear to Ebony  
20 like I don't want to be around guns. Usually she  
21 don't have them out, but there's been times when  
22 I have walked in the house, and she might have  
23 been fiddling with it or something, and I would  
24 say, Hey, and she would put it up, so I move on.

25 Q. So you were always careful not to be

1 around her firearm?

2 A. Yes, ma'am.

3 Q. Because you've had some serious  
4 consequences for firearm possession, haven't you?

5 A. Definitely.

6 Q. Were you over at The Pony with Shavion  
7 Reed in the early morning hours of May the 26th?

8 A. Yes, ma'am.

9 Q. And the car that you drove over, what  
10 car was that?

11 A. The rental car.

12 Q. It's hard to talk about, Mr. Swan, but  
13 were you being honest with these women about who  
14 you were seeing and who you weren't seeing?

15 A. No, ma'am.

16 Q. Did Ebony appear at The Pony that  
17 evening?

18 A. Yes, ma'am.

19 Q. And that evening would be the early  
20 morning hours of May the 26th?

21 A. Yes, ma'am.

22 Q. Had she been calling you trying to get  
23 ahold of you?

24 A. Yes, ma'am.

25 Q. Had you been taking all of her calls?

1           A. Not all of them. You know, we were  
2 supposed to go to Indiana, so I was kind of like  
3 not answering or something, or I might answer and  
4 be like, oh, I'm going somewhere. I'm going to  
5 call you right back or something.

6           Q. And did she show up at The Pony at some  
7 point?

8           A. Yes, ma'am.

9           Q. And was she driving your black Dodge  
10 Charger?

11          A. Yes, ma'am.

12          Q. And I know we've heard from her, and  
13 we've heard from Ms. Reed. But what did Ebony  
14 say to you when she confronted you?

15          A. I don't remember her exact words. It  
16 wasn't nice. It was, you know, a lot of cussing  
17 and screaming.

18          Q. She was very, very upset?

19          A. Yes, ma'am.

20          Q. Can you blame her?

21          A. No, ma'am.

22          Q. And then Ms. Reed, was she also upset?

23          A. Yes, ma'am.

24          Q. What car did Ms. Stigall leave in?

25          A. She ended up taking the rental car.

1 Q. And were the keys in it?

2 A. Yes, ma'am.

3 Q. And why is that?

4 A. Have you ever been to The Pony? Like,  
5 first of all, I didn't plan on staying that long,  
6 but everybody is not going in the club. It's  
7 like more of an outside in the parking lot thing.  
8 And when Shavion asked me to come over, I really  
9 didn't -- you know -- it was I was supposed to be  
10 going to Indiana with Ebony, so, you know, I  
11 wasn't -- I probably shouldn't have went, and I  
12 ended up going anyways, but I didn't plan to stay  
13 that long, so the car was still running with the  
14 keys in it.

15 Q. At some point you did leave The Pony?

16 A. Yes, ma'am.

17 Q. Of course, your black Charger was there?

18 A. Yes, ma'am.

19 Q. So you leave in the black Charger?

20 A. Yes, ma'am.

21 Q. Did you realize that Ms. Stigall's  
22 firearm was in the door pocket?

23 A. No, ma'am.

24 Q. Did you have any reason to look for it?

25 A. No, ma'am.

Q. Had Ebony always been careful about keeping her firearms away from you?

3                   A. Yes, ma'am. She knows I don't like  
4 guns because they have cost me a lot in my life.  
5 I did time for guns. I've been shot by guns. So  
6 I don't deal with guns at all. Like they  
7 don't -- everybody knows I don't like to be  
8 around guns period. And it's not just because I  
9 can't, but because I don't like to be around guns  
10 at all.

Q. Had you been drinking at The Pony?

A. Yes, ma'am.

13 Q. Would you say you were intoxicated, or  
14 how would you rate it?

15           A. I wouldn't say I was intoxicated, but,  
16 you know, those machines or something might have  
17 said it, but I wouldn't say I was. I was still  
18 pretty okay I would say.

19 Q. Mr. Swan, I'm showing you Defendant's  
20 Exhibit C. Do you recognize what this picture is?

21 A. Yes, ma'am.

22 (Defendant's Exhibit No. C, Photo,  
23 was identified.)

24 | BY MS. BOOTH:

Q. Can you tell the jury what it is?

1           A. That's a bottle of Remy, a fifth of Remy  
2 Martin.

3           Q. And is that your bottle of alcohol?

4           A. Yes, ma'am.

5           Q. And is that what you were drinking over  
6 at The Pony?

7           A. Yes, ma'am.

8           Q. Are those cigarettes also yours?

9           A. Yes, ma'am.

10          Q. When you left The Pony, were you upset?

11          A. Yeah. I was more of in a situation. I  
12 probably had been not honest with both women, and  
13 it just came out all at once. And my daughter  
14 was still at Ebony's house because I was taking  
15 my daughter with us to Indiana also. So my  
16 daughter was over there. She was mad. She then  
17 took the rental car.

18           So Shavion, I'm trying to explain her  
19 why she had seen Ebony driving the car. So there  
20 was just a lot going on at the time. So, yeah, I  
21 was upset, but more felt dumb for causing the  
22 situation.

23          Q. When you were coming back into Missouri  
24 across the Mississippi River bridge, did another  
25 car pull up next to you, or was another car

1 leaving The Pony that wanted to race?

2 A. Yes, ma'am. He didn't so just pull up.  
3 He was just like kind of just racing by me, which  
4 is like, you know, we both was just racing into  
5 the Missouri side.

6 Q. So another man is in a car, and you-all  
7 thought you just -- you would -- he was just  
8 racing past you, and you thought you'd see what  
9 that Charger could do?

10 A. I get that a lot. I have got a hemi,  
11 and he was in an Audi, which is a pretty fast car  
12 too. I get that a lot of people pulling up  
13 wanting to race, so, yes.

14 Q. So you actually did exceed the speed  
15 limit coming into Missouri; correct?

16 A. Yes, ma'am.

17 Q. Now, coming into Missouri as soon as you  
18 got off the bridge did you see any police  
19 officers or --

20 A. Yeah, I seen them. They was to the --  
21 they was to my right where they said like on  
22 College by the bridge.

23 Q. So the police officers' location was  
24 clear to see from the road that you were on?

25 A. Yeah. There was nothing separating us

1 but a fence.

2 Q. And did you try to slow down at all?

3 A. I did try to slow down, but once I seen  
4 them it was pretty much too late, because they  
5 were parked there. And by the time I seen them  
6 and tried to slow down I was still well over the  
7 speed limit. I don't recall actually what I was  
8 going. They said they clocked me, but I didn't  
9 recall at the time looking at it. We was just  
10 racing. And just once I seen them I knew they  
11 seen I was going pretty fast.

12 Q. So you knew that you had just blown by  
13 the police officers going incredibly fast?

14 A. Definitely.

15 Q. And what did you decide to do?

16 A. I tried to turn, which in order for the  
17 police to come they wouldn't -- they wouldn't be  
18 able to come straight toward me. So they would  
19 have to go around the block about two blocks away  
20 to come up. And so I tried to speed up and get  
21 past where I thought they would be coming from  
22 and zigzagged through the neighborhood.

23 Q. So you were trying to disappear?

24 A. Yes.

25 Q. And why? Why not just pull over for the

1 police officers?

2 A. The last time I pulled over for the  
3 police officer and didn't think I was drunk I  
4 blew a .08, which is actually the Missouri legal  
5 limit, and I still received a DWI, a felony DWI,  
6 which I had to go to prison for. So me drinking.

7 It was just -- you know, it was a lot.  
8 My daughter is at Ebony's house. I'm going  
9 through this situation with two women. I just --  
10 you know, I didn't want to go to jail right then  
11 and there, you know, for the DWI again when my  
12 daughter was there and then explain to my child's  
13 mother where my daughter is. It was just a lot to  
14 go to jail right then. I knew I'd go to jail,  
15 though, because, of course, I'm in my car.

16 Q. And the police officers know your car?

17 A. Yeah, pretty much.

18 Q. Ms. Stigall, where you spent time at her  
19 house, is that directly across the house from a  
20 -- I'm sorry, directly across the street from  
21 where a Cape Girardeau Police Department officer  
22 lives?

23 A. Yes, ma'am.

24 Q. And you would see him there all the  
25 time?

1           A. I've seen him. I've probably been  
2 pulled over by him. Like Eggers said, he pulled  
3 me over. Like the police know my car because  
4 it's got pulled over plenty of times. He seen  
5 me, so, yeah, I'm pretty sure they know that's  
6 Barrett Swan's car.

7           Q. And at the time you fled from the police  
8 did you know the firearm was in the car?

9           A. No, ma'am.

10          Q. When did you learn that Ebony's firearm  
11 was in the car?

12          A. Once I was charged with it.

13          Q. Had you known the firearm was in the car  
14 what would you have done?

15          A. Honestly, I would have got rid of it. I  
16 had plenty of time. I'm saying I had seen the  
17 police where they were parked. I was blocks away  
18 from them before he even hit his lights and  
19 before he even caught contact with me. So if I  
20 knew I had a firearm, I definitely would have  
21 gotten rid of it.

22          Q. So you were arrested, Mr. Swan, when the  
23 police caught up with you on foot?

24          A. Yes, ma'am.

25          Q. And did you fight with them in any way

1 or --

2 A. No, ma'am. There was no need to fight.  
3 At the time I didn't know -- you know, I'm just  
4 thinking, you know, speeding. I ran from them,  
5 so, of course, that's another charge. You know,  
6 I had to face it. So there was no need to argue  
7 or fight with them. I'm going to jail.

8 Q. And you were charged, correct, at the  
9 state level?

10 A. Yes, ma'am.

11 Q. And that would be for felon in  
12 possession of a firearm?

13 A. Yes, ma'am.

14 Q. And you were released from custody;  
15 correct?

16 A. Yes. I posted bond.

17 Q. And so at some point did you realize  
18 that most likely you were going to be indicted by  
19 the federal government for felon in possession of  
20 a firearm?

21 A. Yes. I had -- when I bonded out, I  
22 hired Steve Wilson as my lawyer. I knew Steve.  
23 We had known each other. I had used him a few  
24 times. So he had told me it probably was a good  
25 chance, you know, to defend to pick it up,

1 basically, you know, because whenever he took my  
2 money he let me know like if it's federal, the  
3 price will go up. So he's like you know you got  
4 a good chance of the feds picking it up.

5 Q. And you'd been prosecuted by the federal  
6 government before, years prior, for felon in  
7 possession of a firearm?

8 A. Yes, ma'am.

9 Q. So you were pretty confident that  
10 federal indictment was going to come?

11 A. Yeah, I knew it was definitely going to  
12 come. Actually, there was a conversation between  
13 him and Jennifer whenever I waived -- I mean,  
14 with Angel. I waived my preliminary hearing,  
15 because the judge had took my license for going  
16 so fast or whatever, so he took my license.

17 So Steve's thing was I wanted to still  
18 have my preliminary hearing and bring up, you  
19 know, the situation about the gun with Ebony and  
20 everything. He said if I wanted my license back  
21 right then to go ahead and waive it and get in  
22 front of a different judge so we can get your  
23 license back, and so I can drive.

24 And actually, Angel had came to him and  
25 whenever I waived it and was like, you know, what

1       is he trying to do, waive his rights and hurry up  
2 and plead out? So when she told Steve that,  
3 Steve had came to me, and he was like, you know,  
4 yeah, she pretty much let me know like it's  
5 probably going to be picked up by the federal  
6 government. They think you're trying to -- they  
7 thought I was trying to plead out, that's why I  
8 waived my preliminary hearing. Actually, I was  
9 trying to get my license.

10       Q. So you just said a lot, so let me  
11 clarify that for the jury. When you were charged  
12 at the state level in Cape Girardeau for felon in  
13 possession of a firearm, the state court  
14 prosecutor had charged you with that?

15       A. Yes, ma'am.

16       Q. And when you say "Angel," you mean  
17 Ms. Woodruff?

18       A. Yes.

19       Q. All right. And she's also a Special  
20 Assistant United States Attorney; correct?

21       A. Yes, ma'am. They told me she was in  
22 some program where she was able to get it hung  
23 over straight to -- and prosecuting it in  
24 federal.

25       Q. Yes. She's a Special Assistant United

1 States Attorney. So when she was prosecuting  
2 your state matter, pretty clearly you knew this  
3 will probably go federal?

4 A. Yes.

5 Q. Because she is a Special United States  
6 Attorney?

7 A. Steve told me that, yeah.

8 Q. Okay. So then that summer what did you  
9 do? Did you just wait for the warrant to come  
10 out or --

11 A. I was going through a lot at that time.  
12 My stepfather, who's now passed away -- he passed  
13 away in April, but at the time he had cancer. He  
14 was battling cancer staying in St. Louis. And  
15 actually when I went up to St. Louis to visit  
16 Tiara, that's what I was doing, I was visiting my  
17 stepfather. He was in the hospital fighting,  
18 battling cancer.

19 Q. So you were out with Ms. Thorpe the  
20 early morning hours of August 1st of 2018?

21 A. Yes, ma'am.

22 Q. And you had been up in St. Louis  
23 visiting your father?

24 A. Yes, ma'am.

25 Q. But Ms. Thorpe had asked you to go out

1 for her birthday, and you thought, well, that's  
2 all right, I'll do that too?

3 A. She knew I was going through a lot, you  
4 know, with the -- there was a lot going on. But  
5 I needed -- I knew probably the warrant -- I had  
6 the warrant and what I was going through with my  
7 mother. I'm my mother's only child. And she was  
8 going through that with my father. My mother was  
9 still at home trying to work and pay bills, and  
10 he's in the hospital. So I guess, you know, she  
11 just kind of just got me out to come on, have fun  
12 and took me with her.

13 Q. And when the car was stopped in  
14 Florissant on August the 1st of 2018, did you  
15 have a pretty good idea that that federal warrant  
16 might be out?

17 A. Yeah. I knew. Yeah.

18 Q. How did you know?

19 A. Because whenever the warrant came out,  
20 they -- the police went to Ebony's house and my  
21 mother's house at the same time. They were going  
22 there with search warrants to get me. It just so  
23 happened I was in St. Louis.

24 Q. So on August 1st when Officer Kemp asked  
25 you for your name the first time, is that why you

1 gave him a fake name?

2 A. I gave him a fake name just -- I don't  
3 know. I really wasn't thinking. You know, I was  
4 just going through a lot. I really wasn't just  
5 really -- I knew what was going to come. I  
6 definitely was going to jail once he found out  
7 that I was Barrett Swan. You know, I didn't  
8 think about the name and the Social Security. I  
9 just blurted out anything out of my head, so I  
10 knew he'd be coming back.

11 You know, so I don't know, like Tiara  
12 said, we had a conversation where it was like  
13 basically you're going to have to face this.

14 Q. So while Officer Kemp was back at the  
15 car trying to run the fake identification, you  
16 decided in your mind I just -- I need to tell him  
17 who I am, and I just need to face this?

18 A. Yeah. After talking to Tiara, Tiara is  
19 like, you know, there's no way out of it. You  
20 gave him a wrong name. It's just any name, any  
21 Social Security Number, so, of course, he was  
22 coming back for the real name.

23 You know, she was just -- she was kind  
24 of trying to ease me like this is going to be all  
25 right. You know, you've got to face it. There

1 ain't going to be anything you can do about it.  
2 You have got to give him your real name, so  
3 that's what I did.

4 Q. So when he came back, you did give him  
5 your real name?

6 A. Yes, ma'am.

7 Q. And then he went back to his car to  
8 check that real name?

9 A. Yes, ma'am.

10 Q. So you had a significant amount of time  
11 to sit in the car with Ms. Thorpe; correct?

12 A. Yeah.

13 Q. Before the police officer came back to  
14 get you out of the car?

15 A. Yes, ma'am.

16 Q. And you and Ms. Thorpe were unattended?  
17 No other police officer was there watching every  
18 move you made?

19 A. No, ma'am.

20 Q. You were free to move about the car and  
21 do whatever you want?

22 A. Yes, ma'am.

23 Q. Did you have possession of Ms. Thorpe's  
24 firearm?

25 A. No, ma'am.

1 Q. Mr. Swan, and you were sober this  
2 evening when talking to the police officer?

3 A. Yes.

4 Q. And you knew he was a police officer,  
5 and he's coming back for you?

6 A. Yes, ma'am.

7 Q. And you were cooperative with him and  
8 never battled with him?

9 A. Yes, ma'am.

10 Q. If Ms. Thorpe had had her firearm out in  
11 the vehicle, would you have told her anything  
12 specific to do with it knowing that a police  
13 officer is coming back probably to get you out of  
14 the car?

15 A. I would have told her -- you're saying  
16 if it was out? If it was out, yeah, I would have  
17 told her. If I had knew she had the gun in  
18 there, I would have said, yeah, I would have told  
19 her. I probably never would have got in the car,  
20 period, if I had knew the gun was in there.

21 Like I know -- I just don't like being  
22 the around the guns. I'm saying it's cost me too  
23 much in my life at this point.

24 Q. It cost you too much. You had  
25 incarceration over it?

1           A. Incarceration. I've been shot. I've  
2 been -- I had a friend right before I got locked  
3 up that killed herself with a gun, so, yeah, I've  
4 been through a lot with guns, and I just don't  
5 like guns.

6           Q. In 2016 you were shot?

7           A. Yes, ma'am.

8           Q. And that was -- was that Christmas Eve  
9 or Christmas Day?

10          A. It was Christmas morning. It was about  
11 3:00 or 4:00 in the morning in Sikeston.

12          Q. Christmas morning in Sikeston, Missouri?

13          A. Yes, ma'am.

14          Q. You were at a big party with a lot of  
15 people?

16          A. Yes, ma'am.

17          Q. And were you in an argument with  
18 someone?

19          A. No. No. I didn't have any problems at  
20 all. You know, I don't -- I really don't even  
21 know what happened. There was a lot of people  
22 outside, and it was dark. You know, it was the  
23 club was closed, so we was all outside.

24           And, you know, I was shot in the back.  
25 I never seen, you know, who did it or anything.

1 So I really don't know what happened, because  
2 there was no arguments, or no -- I didn't have  
3 any problems with anybody when I was shot.

4 Q. And you were shot in the back?

5 A. Yes, ma'am.

6 Q. Was it a long recovery after that?

7 A. Yes, ma'am.

8 Q. Were you in the hospital or were you --

9 A. I was in the hospital for quite some  
10 time. I was in a coma for, what, 11 days. And  
11 there was a lot of damage. There was a lot of  
12 damage. And at the time I didn't have insurance,  
13 so, you know, they got me out of the hospital,  
14 you know -- once I was alive they got me out of  
15 the hospital, but I was still having to go back  
16 and forth.

17 I was having -- once my insurance got --  
18 I did get insurance. I had nurses coming to the  
19 house twice a week. I had a lot of problems.  
20 There was a lot of complications after being  
21 shot.

22 Q. Mr. Swan, do you still have physical  
23 issues from being shot?

24 A. Yes, ma'am.

25 Q. What are those issues?

1           A. I have a colostomy bag. I still have to  
2 have surgery -- I have to have surgery to redo  
3 that. They have got to -- my stomach was split  
4 wide open.

5           Q. I'm sure being shot was very  
6 frightening?

7           A. Yes, ma'am.

8           Q. Why not carry a firearm to protect  
9 yourself in case someone tries to shoot you  
10 again?

11          A. Well, for one I didn't -- I'm saying I  
12 really don't know who -- why I was shot. So it  
13 wasn't like, oh, I think somebody is trying to  
14 kill me, so get a gun. It was never anything  
15 like that.

16          Like I believe it was just either a  
17 mistaken identity or the bullet just didn't go  
18 right where somebody was shooting. I don't know  
19 what the case may be, but it was nothing that  
20 made me feel like I was unsafe. I still go to  
21 Sikeston. You know, I have friends, and I still  
22 go to Sikeston all the time.

23          I haven't had any problems since then.  
24 There was no threats or anything. You know,  
25 everybody was pretty much hoping I got better, so

1 I didn't see no need to ever have a gun. Plus I  
2 know I can't have them at all. So, you know,  
3 that ain't going to make the situation no better  
4 for me carrying a gun and going to jail for it.

5 Q. Now, when you went back to the  
6 Florissant Police Station with Officer Kemp to  
7 get booked in, were you cooperative during the  
8 booking process?

9 A. Yes, ma'am.

10 Q. And at some point does he ask you about  
11 if you have any health issues because he's about  
12 to book you into jail?

13 A. Yes, ma'am. I made sure to tell him  
14 that, you know, I have a colostomy bag, so it's a  
15 lot to deal with. So, yeah, I have to tell them.  
16 When they're booking you in, they ask you, you  
17 know, if you have any health issues or anything  
18 of those things, so I had to tell him that, yeah.

19 Q. Did you tell Officer Kemp at that point  
20 that you had been shot, and that's why you have  
21 the colostomy bag?

22 A. Yes, ma'am.

23 Q. And you were telling him, like, the  
24 supplies that you needed, because you didn't have  
25 any of those --

1           A. Yeah, I told him. Yeah, because when  
2 I'm in jail, I'm going to have to have extra  
3 bags, glue, scissors. I got to have a lot of  
4 stuff with me at all times, because, you know, I  
5 don't know when I have to change it or whatever,  
6 so, yeah, I had to explain it to him that, you  
7 know, I have to have access to those types of  
8 thing, yes.

9           Q. Because you deal with your colostomy bag  
10 yourself?

11          A. Yes, ma'am.

12          Q. And then at some point did he ask you  
13 that he wanted to talk about the firearm found in  
14 the car?

15          A. Yes, ma'am.

16          Q. In Tiara's car?

17          A. Yes, ma'am.

18          Q. And you heard him testify here today.  
19 Did you -- I'm sorry, sir, yesterday. Did you  
20 ever tell him anything to the effect of I know  
21 what you found in the car, and I'd rather be in  
22 the situation that I am now than the one when I  
23 was shot and had nothing on me? Did you say that  
24 to him?

25          A. Definitely not. He definitely added

1       that part. Yeah. It was very similar. Whenever  
2       he asked me -- he told me, you know, after you  
3       get dressed, I'm going to take you to the  
4       interview room and talk about it.

5                  And I was like, you know, I don't want  
6       to talk. You know, we both know that whatever  
7       you found in that car was hers. It's simple.  
8       But I told him, you know, like I don't care about  
9       the situation, because at the time it was better  
10      than being shot. You know what I'm saying?

11                 I didn't go into detail about how I got  
12       shot, or anything, but I just told him I'd rather  
13       be in this situation than whenever I got shot. I  
14       didn't say when I didn't have a gun on me. He  
15       definitely added that statement in there.

16                 Q. And what did you mean by when you said,  
17       Hey, I'd rather be in this situation than like  
18       when I got shot?

19                 A. Basically I'm saying I'd rather be --  
20       even though I didn't know Tiara had a gun in the  
21       car, I'd rather be in a situation with somebody  
22       with a gun in the car than back when I was there  
23       and nobody had nothing. Like just recently I'm  
24       showing you I didn't have a gun, so I didn't have  
25       no gun. Nobody around me had no gun, and it was

1 I got shot.

2                   Nobody to help me. I drove myself to  
3 the hospital. You know, I had to drive, and  
4 nobody was there to help me do anything. So,  
5 yeah, I'd rather be in a situation where you  
6 found somebody's legal gun on them, and back when  
7 I was shot and I didn't have anybody around me.  
8 Yeah, I definitely would rather be in that  
9 situation.

10                 Q. So your point was to him that you  
11 weren't heartbroken to come to find out that  
12 Tiara had a firearm?

13                 A. Yeah. Exactly. And then after that  
14 they didn't -- I didn't really actually know I  
15 was ever charged because I never went to court.  
16 It was 17 days before they brought me back here.

17                 When they was -- when he was asking  
18 about the gun, he never said, oh, well, you know,  
19 I'm charging you with this gun. You know, I'm  
20 thinking about the Missouri incident which I was  
21 being arrested for was a gun.

22                 And, no, I'm not -- that's -- that's  
23 just what it was. It was never no statement  
24 about, oh, I had a gun -- whenever I got shot I  
25 had -- I didn't have a gun. No, it was nothing

1 | I like that.

2                   But he said it clear. He was -- I'm not  
3 going to say honest, but he did say he didn't  
4 know exactly what I said, so, yeah.

5 MS. BOOTH: I have nothing further  
6 for Barrett Swan at this moment.

7 THE COURT: Mr. Sorrell.

8 MR. SORRELL: Thank you.

## CROSS-EXAMINATION

10 BY MR. SORRELL:

11 Q. Thank you. Mr. Swan, let me go back to  
12 May the 25th of 2018 at this first event. Do you  
13 remember that night?

14 A. Yes, sir.

15 Q. Okay. We all can agree that there was a  
16 series of bad decisions made by you that night;  
17 is that fair?

18 A. Yes, sir.

19 Q. Now, being involved with two different  
20 women at the same time was certainly a bad  
21 decision?

22 | A. Definitely.

23 Q. Certainly and also involved with  
24 Ms. Thorpe at the same time in St. Louis?

25 A. Yes, sir.

1           Q. Okay. That's bound to cause problems  
2 even if you don't have guns thrown in the mix;  
3 isn't that fair?

4           A. Yes, sir.

5           Q. Okay. Now, that night I believe that  
6 you -- at least at the evening you wound up at  
7 The Pony across the river over in Illinois; is  
8 that fair?

9           A. Yes, sir.

10          Q. And The Pony is a strip club, isn't it?

11          A. Yes, sir.

12          Q. Is that a club you go to very often?

13          A. I wouldn't say -- I don't -- I never go  
14 in. I don't go in at all. It's like people hang  
15 out in the parking lot. Sometimes I might ride  
16 through. I don't frequent it, no.

17          Q. All right. It's not uncommon for people  
18 to have guns over there on The Pony parking lot,  
19 is it?

20          A. To have guns over there?

21          Q. Yes.

22          A. I don't know about that. I never seen  
23 nobody with guns over there.

24          Q. You never heard about any shots fired on  
25 The Pony parking lot?

1           A. Have I heard about it? Yeah. I've  
2 heard about it, but I don't -- that's what I'm  
3 saying. I'm not saying it's -- no, I don't know  
4 people that hang around with guns when the shots  
5 are fired.

6           Have I heard about shots being fired  
7 over there? I wasn't in the area, so I really  
8 don't recall, but I don't -- I never seen nobody  
9 just walking around with guns at The Pony, no.

10          Q. All right. Of course, I wouldn't assume  
11 they would carry them out in the open, but you  
12 decide to come back to Missouri that night about,  
13 oh, 3:30 or so in the morning; is that fair?

14          A. I'm not going to get into times at all.  
15 It's been like a year.

16          Q. Okay.

17          A. Maybe it's been over a year, so, yeah,  
18 I'm not going to get into times. I don't know.  
19 I wasn't looking at watches. I wasn't looking at  
20 times at all.

21          Q. It was dark?

22          A. Yes.

23          Q. And you decided -- and you engage with  
24 this other car, and you thought they wanted to  
25 race, so you decided to accept that challenge?

1 A. Yes, sir.

2 Q. You had a car that would do it?

3 A. Yes, sir.

4 Q. Okay. So did both of you floor your  
5 cars at that time?

6 A. I'm not going to say floor. I  
7 definitely didn't floor it right there, but, you  
8 know, he came -- I didn't see -- he come past  
9 fast, so, you know, it was just like a stop kind  
10 of -- not stop, but, you know, slow down by me to  
11 let me know that's what he was trying to do was  
12 racing, so we sped up.

13 Q. And you come over the bridge at  
14 100 miles an hour or about 90 to 100?

15 A. I don't -- I don't recall. I did never  
16 look at my speedometer.

17 Q. Well, let me ask you this: Do you  
18 disagree with the officer's testimony that you  
19 were doing about 90 miles an hour?

20 A. Do I disagree? I'm not quite sure how  
21 fast I was going. He said it was 100. I'm  
22 not -- I can't dispute it, because I didn't have  
23 a radar. He said he had a radar. I don't -- I  
24 don't know. Maybe he clocked the other car. I  
25 can't be specific on which car he clocked.

1                   We was racing across the bridge. He was  
2 on the other side of a whole fence. So maybe  
3 when he -- I don't know how the radars even work.  
4 I guess if you aim it at two cars, it's going to  
5 clock one of them. I don't know how fast I was  
6 going.

7                   Q. So you want to dispute how fast you were  
8 going?

9                   A. I'm not going to --

10                  Q. I'll have it either way. I don't care.

11                  A. I'm not going to dispute how fast I was  
12 going.

13                  Q. Okay. But, well, we can both agree that  
14 it's a bad decision to drive in to the city  
15 limits of Cape Girardeau at 90 miles an hour?

16                  A. Definitely. Definitely.

17                  Q. And if you're driving that fast, you  
18 can't have any care for pedestrians or other cars  
19 on the street?

20                  A. No, I wouldn't say that either. We was  
21 on the highway. There's a highway coming off the  
22 bridge, straight highway. You can see all of the  
23 cars.

24                  Q. And if someone pulled out in front of  
25 you, would you have had time to stop?

1           A. There's nowhere to pull out in front of  
2 me until you get to the street, which is we were  
3 on the highway.

4           Q. Right. But you didn't get stopped on  
5 the highway.

6           A. But there's no side streets because we  
7 was on the highway.

8           Q. All right. So you're saying that it's  
9 impossible for someone to have pulled out in  
10 front of you?

11          A. No, I'm not saying that, sir. I'm not  
12 saying that at all. I'm saying that it's really  
13 unlikely that at that time of night that on a  
14 bridge that a car is just going to come out of  
15 nowhere when there's no streets right here to  
16 just come out in front of you at. That's what  
17 I'm saying.

18          Q. All right. It was a risk you were  
19 willing to take?

20          A. Huh?

21          Q. It's a risk that you were willing to  
22 take?

23          A. If I was in my head, no, I wouldn't have  
24 been willing to take -- right then and there I  
25 wasn't thinking, and, yeah, I did it. I wouldn't

1 do it over again. No, I'm not proud of the  
2 decision I made to do it.

3 Q. Okay. And I believe you said that you  
4 had been in a rental car earlier that evening?

5 A. Yes, sir.

6 Q. And do you have that rental contract?

7 A. Do I have it?

8 Q. Yes.

9 A. No. No.

10 Q. Who rented it?

11 A. Ebony had.

12 Q. And so it wasn't rented in your name?

13 A. No, sir.

14 Q. Did you pay for the rental?

15 A. No, sir. She did.

16 Q. Okay. So you were just driving the  
17 rental car yourself?

18 A. She had took my car. I didn't have a  
19 choice about what to drive. I was staying at her  
20 house.

21 Q. Okay. But today at least you don't have  
22 the rental car contract?

23 A. That's a year ago. Why would I have a  
24 rental car contract for a car that I didn't rent?

25 Q. Well, I just thought that -- I just

1 thought you might have one to show that there was  
2 a car rented. Maybe I'm wrong.

3 A. I didn't rent the car.

4 Q. Okay.

5 A. So I would never have one even if there  
6 was one.

7 Q. All right.

8 A. Okay.

9 Q. So when you came over the bridge at this  
10 90 miles an hour, you saw the police officer?

11 A. Yes, sir.

12 Q. Even though he was across the fence and  
13 across the field as you say?

14 A. Yes.

15 Q. You knew then that there was a high  
16 likelihood that they were going to notice you?

17 A. Yes, sir.

18 Q. And so you decided to make a decision to  
19 try to escape?

20 A. Yes, sir.

21 Q. And go on.

22 A. Yes.

23 Q. Okay. Now, you had a choice, either you  
24 could have pulled over or continued on; is that  
25 right?

1           A. Pull over on the bridge? There was no  
2 lights. There was no pull -- I could have pulled  
3 over, got out of the car and walked and  
4 never -- you know, but I don't -- pulled over  
5 there was nobody stopping me. The police was on  
6 the other side of the fence. I'm sure they had  
7 saw me, but they hadn't activated their lights  
8 or -- you know, they hadn't -- there was no  
9 reason to just pull over.

10          Q. Well, or maybe I've said it wrong. You  
11 could have slowed down?

12          A. Yeah, I did slow down.

13          Q. Okay. So but you didn't do that, did  
14 you?

15          A. I tried to slow down, yes.

16          Q. You tried?

17          A. Yes, I did try to slow down.

18          Q. All right. Then where did you make your  
19 first turn when you got off the highway?

20          A. Sprigg Street.

21          Q. Sprigg?

22          A. Yes, sir.

23          Q. And went down Sprigg Street how far?

24          A. I don't know.

25          Q. A block or two?

1 A. Yes.

2 Q. And then turned and went back again  
3 east?

4 A. No.

5 Q. Or west I mean headed toward --

6 A. Yes.

7 Q. -- the I-55?

8 And is it fair to say you were running  
9 as hard as you could --

10 A. No, definitely not.

11 Q. -- through those streets?

12 You could have run it faster?

13 A. Running or with the car?

14 Q. No, the car, with the car.

15 A. The car? Could I have been going  
16 faster?

17 Q. Yes.

18 A. I have got 160 on my dashboard. Yes, I  
19 could have gone faster.

20 Q. In the city streets --

21 A. In the city streets --

22 Q. -- I mean, making those turns?

23 A. Making those turns? I'm saying I could  
24 have definitely been going faster than what I was  
25 going, yes.

1 Q. Now, this ended with you sliding into  
2 another car, didn't it?

3 A. It slid. If you showed the picture,  
4 it -- I bumped it, and then it wasn't no crash to  
5 where our cars were messed up, or nothing like  
6 that. I was -- I had slowed down tremendously by  
7 that time.

8 Q. But basically it ended when you slid off  
9 into this other car?

10 A. Yes, sir.

11 Q. That's what caused you to stop is the --  
12 is this minor accident?

13 A. Yes, sir.

14 Q. Okay. And at that point you could have  
15 said, all right, game is up, and I could just  
16 stay with the car?

17 A. Yes, I could.

18 Q. The officer pulled in right behind you?

19 A. I'm pretty sure right there around  
20 there. I'm not quite sure, but, yeah, he was  
21 behind me.

22 Q. And that was an officer that you knew?

23 A. I didn't know what officer was behind me  
24 at the time.

25 Q. So when you stopped there and you had

1 just struck this other car, and you're sitting  
2 there, you decide to get out of the car, and you  
3 open the driver's door; is that right?

4 A. Yes, sir.

5 Q. And you did what?

6 A. I got out of the car.

7 Q. And then what?

8 A. I ran.

9 Q. Did the officer call your name?

10 A. I don't recall that.

11 Q. Just running too fast?

12 A. No. It's been a year. I don't recall  
13 all of it because it's been over a year. I don't  
14 remember him calling me.

15 Q. And, again, it's kind of another bad  
16 decision, isn't it, to run away?

17 A. Definitely. Definitely it was a bad  
18 decision.

19 Q. So the -- when you left, we can all  
20 agree that there was a bottle of Remy in your  
21 car?

22 A. A bottle of Remy?

23 Q. Yeah.

24 A. Yes, sir.

25 Q. That was yours?

1 A. Yes, sir.

2 Q. Now, you'd had a DWI in the past?

3 A. Yes.

4 Q. A felony DWI?

5 A. Yes, sir.

6 Q. And so you knew that could be a problem  
7 having alcohol in your car and maybe being  
8 impaired to drive; right?

9 A. Mainly the reason I ran, yes. Yes, sir.  
10 I mean, if I knew --

11 Q. Well, you said that --

12 A. -- when I got out, yes, it definitely  
13 would have been a DWI probably.

14 Q. So that bottle of liquor could have been  
15 a problem in a stop; is that fair?

16 A. Not the liquor, no. The bottle -- it's  
17 not against the law to have a bottle of liquor in  
18 your car.

19 Q. You don't think that would have given  
20 the officers an idea of what you might have had  
21 to drink that night?

22 A. The smell on me probably would have.  
23 Not the liquor, no. I -- probably every time I  
24 get pulled over somehow if there's a bottle in  
25 there, they don't go, oh, you're drunk, no.

1           Q. But you mentioned that you had time to  
2 throw the gun out if you had known it was there.  
3 Do you remember that?

4           A. Definitely.

5           Q. But you didn't throw the liquor out,  
6 did you?

7           A. Why would I?

8           Q. Why? To get rid of it because you'd  
9 been convicted of a DWI before.

10          A. Yeah, but the liquor is not illegal to  
11 have liquor in your car.

12          Q. And the marijuana in the car, was that  
13 yours?

14          A. Yes, sir.

15          Q. You could have thrown it out too?

16          A. It's a misdemeanor.

17          Q. That's right. It didn't really amount  
18 to much.

19          A. It didn't amount to much.

20          Q. So but basically what I'm getting at is  
21 this, is that you really didn't have time to  
22 throw anything out. You were trying to evade the  
23 police.

24          A. I had plenty of time to throw anything I  
25 wanted to throw out of the car.

1 Q. But you're trying to get away first?

2 A. I'm driving.

3 Q. But you're trying to get away?

4 A. I'm driving. I could definitely have  
5 time to throw out anything I wanted to out of my  
6 car. The police wasn't even behind me whenever I  
7 started turning on them streets. The police were  
8 nowhere around.

9 Q. Were you trying to escape?

10 A. I was trying to get away, yes. I was  
11 trying to maybe get away.

12 Q. Okay. And so if you could have gotten  
13 away, you wouldn't have had to throw away  
14 anything?

15 A. If I'd have gotten away, would I have?  
16 Yeah. Still with a gun, yeah, because with a gun  
17 if I know there's a gun in there, I'm definitely  
18 going to get rid of a gun no matter what because  
19 I'm still taking chances. It's in -- it's my  
20 car. So I already knew that regardless of  
21 whether I got away or not I still would be  
22 arrested.

23 Q. And so you're saying you didn't know  
24 that gun was in the pocket of that -- of the  
25 driver's door of that car?

1 A. No, sir.

2 Q. Even though it was right -- it must have  
3 been rattling around in there with you driving  
4 around all of those corners and going that fast?

5 A. No, sir. It definitely wasn't rattling.  
6 I don't know -- I never seen how they had it or  
7 where it was positioned at in the car, but, no,  
8 it wasn't. I didn't hear any rattling.

9 Q. It was on -- found on the driver's  
10 pocket door. You recall that testimony, don't  
11 you?

12 A. Yeah. They said it was in the pocket,  
13 but in the pocket is -- there's a couple of  
14 different pockets.

15 Q. Sure. On the left side of the driver.

16 A. Yeah.

17 Q. And you're left handed?

18 A. Yes. There's a lot of pockets on the  
19 side of the car.

20 Q. Are you left handed?

21 A. Yes, sir.

22 Q. And so then turning to the night of this  
23 event up in Florissant.

24 A. When?

25 Q. That's another night of several bad

1 decisions; is that fair? Is that fair?

2 A. Is what fair?

3 Q. Is it -- was that another night of bad  
4 decisions?

5 A. Yes, I made some bad decisions that  
6 night. I probably have made bad decisions not  
7 probably this costly, but, yeah, I make bad  
8 decisions. I think we all make bad decisions  
9 from time to time.

10 Q. So the officer stopped and came up to  
11 the door. Can you walk us through the sequence  
12 of events that happened at that time?

13 A. He came up to the door and asked me my  
14 name.

15 Q. Well, first off, he didn't ask for your  
16 name first. What did he do first?

17 A. What he did do first? He pulled us over  
18 first.

19 Q. And then what happened?

20 A. He went to Tiara's side and asked her  
21 for her information.

22 Q. All right.

23 A. And he told her why he was stopping her.

24 Q. Okay. Then what happened after that?

25 What's the next thing the officer did?

1           A. He told her he was stopping her for  
2 whatever. I don't recall. I don't really recall  
3 what he said right then and there or what  
4 happened right then. I don't know. He was  
5 talking to her. I wasn't saying anything.

6           Q. Do you know if he gave her tickets at  
7 that time?

8           A. I don't recall when he gave her the  
9 tickets.

10          Q. All right. And so at what point did the  
11 officer ask for your name the first time?

12          A. I believe he said -- whatever she was  
13 pulled over for, I think it was a stop sign,  
14 running a stop sign, she kind of let him know  
15 like, no, I didn't run a stop sign, so they was  
16 going through that. They was having their own  
17 conversation. And I -- after that -- after that  
18 conversation, I guess, or whatever happened was  
19 when he asked me for my information.

20          Q. Was the officer still on Tiara Thorpe's  
21 side of the car?

22          A. To be honest, I'm not going to lie to  
23 you, I can't answer that. I don't recall which  
24 side he was on when he first asked me for my  
25 information.

1 Q. Is that because you might have been  
2 intoxicated that night and just can't remember?

3 A. No, I wasn't intoxicated. I just --  
4 it's been a year. I've been going through a lot  
5 in this last year being locked up. I've been  
6 going through a lot.

7 Q. All right. So but you don't know  
8 exactly when the officer asked you for your name?

9 A. No, sir.

10 Q. Okay. So the -- but eventually you gave  
11 him a name that wasn't the right name?

12 A. Yes, sir.

13 Q. And do you know what name you gave?

14 A. No, sir.

15 Q. Did you give him a Social Security  
16 Number also?

17 A. Yes, sir.

18 Q. And then you knew that wasn't going to  
19 work very well, didn't you?

20 A. I definitely knew that.

21 Q. Because you knew there was an arrest  
22 warrant pending for you, and that's why you gave  
23 a fake name, isn't it?

24 A. Yes, sir.

25 Q. Okay. So it's fair to say you were

1 willing to lie to avoid detection?

2 A. Sir?

3 Q. You were willing to lie that night to  
4 evade detection?

5 A. Yes, sir. Yes, sir.

6 Q. Just as the same you've been willing to  
7 lie to the other women you've been involved with  
8 about the other women?

9 A. I wouldn't say -- I would say you put it  
10 that way. I would say it was more of a -- I  
11 don't -- I wouldn't say lying to the women, you  
12 know, I was more likely just not answering a lot  
13 of questions. It wasn't being truthful. It  
14 wasn't telling the truth, but it wasn't all lies  
15 like I don't know. It wasn't questions of this,  
16 that and the other. I wasn't lying. I just  
17 wasn't truthful.

18 Q. So if one of the ladies asked you if you  
19 were seeing someone else, did you just not  
20 answer, or did you lie?

21 A. I most likely did not answer like come  
22 on now, we don't do that. We're not going  
23 getting into that. You know, I put it off on not  
24 arguing.

25 Q. All right. Now, after the arrest or

1 after your arrest, I believe Officer Kemp allowed  
2 you to say goodbye to Ms. Thorpe that night; is  
3 that right?

4 A. Yes, sir.

5 Q. And can you describe what happened?

6 A. I told her goodbye. I don't even  
7 recall. It was nothing.

8 Q. You don't recall saying goodbye to Ms.  
9 Thorpe?

10 A. Yeah, I recall him letting me tell her  
11 goodbye, but I don't recall the exact words that  
12 was said or anything special happening at that  
13 time.

14 Q. And going through the sequences just to  
15 make sure I understand it, you don't remember  
16 exactly what thing happened at what time: That  
17 is, when the gun was found or when the -- or when  
18 you were asked for an ID or when the officers did  
19 one thing or another?

20 A. Yeah. On the times I'm definitely  
21 not -- I wouldn't -- I couldn't tell you times on  
22 that.

23 Q. You can't tell me which thing happened  
24 first or next or last, or anything like that? I  
25 mean, it's fine. I just want to know if you have

1 a memory of it?

2 A. I have a memory of some things, but some  
3 things aren't as clear as others.

4 Q. Now, did you know that Ms. Thorpe had  
5 that pistol in her car that night?

6 A. No, sir.

7 Q. Do you know that Ms. Thorpe had a  
8 pistol?

9 A. Yes, sir.

10 Q. She'd actually had it in Cape Girardeau  
11 at your home in Cape Girardeau at times; is that  
12 fair?

13 A. She hasn't been in Cape Girardeau to my  
14 home that many times but, yes, she probably --  
15 yeah, she probably didn't -- she ain't just been  
16 like, listen, I have a gun on me, no, she's never  
17 said that, but she probably -- you know, she lets  
18 me know what she's been through in her life.

19 Q. So the -- so you're denying the words to  
20 Officer Kemp, if I understand it correctly, at  
21 the beginning of Mr. Kemp's statement that we  
22 both know what you found in the car? That's the  
23 part you're denying?

24 A. That's not the beginning of it. The  
25 first thing I said was that I don't want to talk.

1 I don't know why that's not being said. Oh,  
2 well, you're not saying that for some reason.  
3 But the beginning of the statement was, I don't  
4 want to talk.

5 Q. Well, mainly because you have a right  
6 not to say -- for that not to come in.

7 A. That's why --

8 Q. We don't mention that, but you have.

9 But then -- but then after that is the  
10 statement made that Mr. Kemp reports of, We both  
11 know what you found in the car? That's the  
12 statement you dispute, isn't it?

13 A. Mr. Kemp didn't report it. Mr. Eggers  
14 reported it. Mr. Kemp never reported it.

15 Q. Well, Mr. Kemp testified. And so Mr.  
16 Kemp testified about what you said on the witness  
17 stand. Are you denying what -- that portion of  
18 Mr. Kemp's statement?

19 A. Which portion?

20 Q. The portion where he said the words --  
21 he repeated your words, We both know what you  
22 found in the car, did you make that statement?

23 A. Is that how -- no, that isn't how it  
24 went. No.

25 Q. I'm sorry?

1 A. That's not exactly how that went, no.

2 Q. Did you say those words?

3 A. That we both know what you found in her  
4 car was hers, yes.

5 Q. Okay. That's what you --

6 A. I let him know that. It was  
7 specifically the conversation went like this.  
8 After I book you, after I get you dressed, I'm  
9 going to take you upstairs, and I specifically  
10 told him, No, I don't want to talk. We both know  
11 whatever you found in the car is hers, and I  
12 would rather be in the situation I'm in now than  
13 when I was shot.

14 Q. Okay.

15 A. There was a period in there. The extra  
16 stuff that he had, no.

17 Q. Okay. And it turned out that you had  
18 actually been shot?

19 A. Yes.

20 Q. How many times had you been shot?

21 A. Three times. Three times at once. Not  
22 separate occasions. I don't know if that makes  
23 sense.

24 Q. Yeah, it does. And I believe that you  
25 testified you had a felony DWI?

1 A. Yes, sir.

2 Q. Did you run at that stop?

3 A. Did I run at that stop?

4 Q. Yeah. Did you try to evade the police  
5 officers?

6 A. On the prior DWI? No. Because I was --  
7 I wasn't. I hadn't been drinking that much.  
8 Actually, the police officer tricked me into  
9 blowing. Well, if you don't blow that much,  
10 don't worry, you're not going to jail. And I was  
11 telling her I'm not blowing. I don't need to  
12 blow. I haven't been drinking that much. Which  
13 I did end up blowing a .08, which is the legal  
14 limit.

15 Q. Okay. That was down at the police  
16 station where you blew in the DataMaster or one  
17 of the machines?

18 A. That's been so many years ago I can't  
19 recall where I blew, sir.

20 Q. You don't really remember?

21 A. That was 2011.

22 Q. But the main impact of that was at least  
23 you didn't run, didn't try to flee from the  
24 officer in your car on that occasion?

25 A. No, I didn't flee from that occasion

1 because it hadn't been a felony yet. I didn't  
2 think it was going to be a felony, no.

3 Q. But it turned out to be?

4 A. Yes.

5 Q. And do you have any dispute about the  
6 accuracy of the radio call logs made by the  
7 Florissant Police Department?

8 A. I can't dispute it, because I don't know  
9 times. I don't know -- I didn't know times at  
10 all. I know -- I know Kemp wasn't honest about a  
11 lot of things, so I dispute anything he says that  
12 he had anything to do with it.

13 Q. All right. What was Mr. Kemp not honest  
14 about?

15 A. He wasn't honest about my statement. He  
16 wasn't honest about telling the other officers  
17 that Tiara told him it was her gun. He said it  
18 up here, but he didn't say it -- I probably might  
19 not have even been indicted had he been honest  
20 and told them that Tiara said that this was her  
21 gun. I might not have to be facing this jury now  
22 if he would have been honest about that part  
23 about that part about that. He wasn't honest  
24 about that. He wasn't honest about it.

25 He wasn't honest about the time. He

1 said it was the 8th, on the 8th. It was the 1st.  
2 There was a lot of things that he said that he  
3 didn't really recall what he said verbatim of my  
4 statement when he attempted to interview me, then  
5 turned around and said that -- tried to put words  
6 together that I said after saying that he didn't  
7 know.

8 I believe in my suppression hearing him  
9 and Mr. Eggers' both stories didn't match up.  
10 Eggers said that, yes, Kemp told him that he was  
11 trying to interview me. Kemp testified that he  
12 didn't. So one of those stories had to be off.  
13 I'm guessing that Eggers was telling the truth.  
14 So, yes, Kemp's stories and lies just continue.

15 So anything that he has to do with, yes,  
16 would be a question to me, because I'm fighting  
17 for my life, so, yes, I'm going to question  
18 anything. If I see you've lied on certain  
19 things, yes, I'm -- it's definitely a question.

20 Q. Okay. But you don't have any dispute  
21 about what Officer Kemp testified about the  
22 sequence of events --

23 A. The sequence of events?

24 Q. -- that took place at the stop?

25 A. Do I have -- I didn't -- the sequence of

1       it I feel like it really didn't mean much. It  
2       really didn't matter, so I didn't pay too much  
3       attention to what sequence in what things  
4       happened.

5                  I know he didn't find a gun on me, so I  
6       knew that was a lie. He lied about where he  
7       found the gun. All this was like it was just  
8       lies. Lies after lies after lies. I don't  
9       understand why he lied about it. I never  
10      understood.

11                 And whenever I was taken to jail, I  
12       wasn't -- I was never brought in front of a  
13       judge, so I never took much care to it, because I  
14       didn't feel like they was charging me with it. I  
15       was locked up 17 days and never was arraigned on  
16       any charge. I wasn't brought down here for a  
17       long while.

18                 So Kemp I figured like, you know, it  
19       wasn't until way afterwards that he said where he  
20       had found the gun and all those lies were told  
21       where he found the gun. There has been a lot of  
22       lies that were told by Officer Kemp.

23                 MR. SORRELL: All right. I'd end,  
24       if I could, Judge. Thank you.

25                 THE COURT: Redirect?

1 MS. BOOTH: No, Your Honor.

2 THE COURT: You may step down.

3 (Witness Excused.)

4 THE COURT: Any other witnesses?

5 MS. BOOTH: No, sir.

6 THE COURT: Does the defense rest  
7 then?

8 MS. BOOTH: Yes, sir.

9 THE COURT: Do you have any  
10 rebuttal?

11 MR. SORRELL: Yes, I do. One.

12 Officer Fodde. He was the second officer at the  
13 scene of the Florissant traffic stop.

14 THE COURT: Ladies and gentlemen,  
15 there's just one more witness. Why don't we try  
16 to do that, and then we'll have an extended  
17 recess for lunch.

18 Is that all right with everybody?  
19 Do you want to break first, or are you ready to  
20 go?

21 Okay. Call your next witness.

22 MR. SORRELL: It's short.

23 THE COURT: That's fine.

24 This is the last witness. What  
25 we'll probably do then is have about an hour and

1 a half lunch break to allow us to prepare the  
2 final instructions to the jury, and we'll have  
3 oral arguments after lunch.

4 KEVIN FODDE,

5 being produced and sworn, testified as follows:

6 THE COURT: You may proceed.

7 DIRECT EXAMINATION

8 BY MR. SORRELL:

9 Q. Would you state your name, please.

10 A. Yes. It's Kevin Fodde.

11 Q. What agency do you work for?

12 A. The Florissant Police Department.

13 Q. How long have you worked for them?

14 A. Oh, about five and a half years.

15 Q. And were you present at a traffic stop  
16 in Florissant, Missouri on August 1st, 2018, when  
17 Mr. Swan was arrested?

18 A. Yes.

19 Q. And do you remember that night?

20 A. Yes.

21 Q. How were you told of the stop? How did  
22 you learn of it?

23 A. Officer Kemp called out with a traffic  
24 stop, so once I heard that over the radio, I  
25 continued to his location.

1           Q. Okay. So that was just over the radio  
2 dispatch, or, that is, he called it out, and you  
3 heard the communication?

4           A. Yes.

5           Q. Okay. And what did you do upon getting  
6 that communication?

7           A. I responded to the scene.

8           Q. And so you arrived at the scene. What  
9 did you see when you first arrived at the scene?

10          A. Officer Kemp was still located inside  
11 his vehicle.

12          Q. Okay. What did you do?

13          A. I got out of my car and approached.

14          Q. And did you take a position between the  
15 cars?

16          A. Yes.

17          Q. And did you make any contact with the  
18 occupants of the stopped car at that time?

19          A. No.

20          Q. Where were the occupants of the stopped  
21 car?

22          A. They were still located inside the  
23 vehicle.

24          Q. At this time had a gun been found?

25          A. No.

1 Q. And did Officer Kemp eventually get out  
2 of his car and walk up to the Edge?

3 A. Yes.

4 Q. Which side did he walk up to?

5 A. The passenger side.

6 Q. And what happened when he walked up to  
7 the passenger side?

8 A. He got Mr. Swan out and advised him that  
9 he had an arrest warrant.

10 Q. And did -- who took custody of Mr. Swan  
11 after he was taken out of the car?

12 A. I did.

13 Q. And what did you do with Mr. Swan?

14 A. We responded back to the rear of the  
15 vehicle.

16 Q. Did Officer Kemp ask the person driving  
17 car to do anything?

18 A. Yes, to step out as well.

19 Q. At the same time?

20 A. Shortly after he asked Mr. Swan to.

21 Q. Okay.

22 A. Yeah.

23 Q. Were both you and Mr. Swan and  
24 Ms. Thorpe then at the back of the Ford Edge?

25 A. Yes.

1 Q. And what's the next thing you saw  
2 Officer Kemp do?

3 A. He was walking back towards his patrol  
4 car with the firearm.

5 Q. The handgun?

6 A. Yes.

7 Q. And he hadn't carried that up to the  
8 car, I suppose?

9 A. No.

10 Q. And you weren't in a position to see  
11 where that gun came from, were you?

12 A. No.

13 Q. How much time elapsed do you think  
14 between the time that you walked to the back of  
15 the car with Mr. Swan and then Mr. Kemp came back  
16 carrying the handgun?

17 A. It was a couple of seconds.

18 Q. Just a little bit of time?

19 A. Yeah.

20 Q. Did you have any conversation that night  
21 with the driver of the car, a Ms. Tiara Thorpe?

22 A. No.

23 Q. Did you ever ask her if she had any  
24 firearms in the car?

25 A. No.

1 Q. Did you ever search that car for  
2 firearms?

3 A. No.

4 Q. Did you ever search the console of that  
5 car?

6 A. No.

7 Q. At any point?

8 A. No.

9 MR. SORRELL: Nothing further.

10 CROSS-EXAMINATION

11 BY MS. BOOTH:

12 Q. Officer Fodde, in preparation for your  
13 testimony here today did you speak with anyone?

14 A. No -- or, yeah, I spoke with the  
15 prosecutor.

16 Q. When did the prosecutor call you to  
17 speak to you?

18 A. I believe it was Friday.

19 Q. And prior to this past Friday, no  
20 prosecution official had called to speak to you?

21 A. No.

22 Q. And, Officer Fodde, this was a situation  
23 where a man was arrested who had an ATF federal  
24 warrant for his arrest and a firearm was found;  
25 correct?

1 A. Correct.

2 Q. All firearm matters are serious matters,  
3 but with an ATF warrant involved that's pretty  
4 serious, wouldn't you say?

5 A. Yeah.

6 Q. And you witnessed this event?

7 A. Correct.

8 Q. And your police report, did you bring  
9 that with you here today?

10 A. No, I did not.

11 Q. Did you create a police report in this  
12 matter?

13 A. No.

14 Q. Have you had a chance to review Officer  
15 Kemp's report in preparation for your testimony  
16 here today?

17 A. I reviewed it earlier, not since like  
18 during the trial.

19 Q. And you're not even mentioned in this  
20 police report, are you?

21 A. No.

22 MS. BOOTH: Your Honor, I have  
23 nothing further for Officer Fodde.

24 MR. SORRELL: No, sir.

25 THE COURT: All right. You may step

1 down.

2 THE WITNESS: Thank you.

3 (Witness Excused.)

4 MR. SORRELL: Nothing further.

5 THE COURT: For the Defendant?

6 MS. BOOTH: No, sir.

7 THE COURT: All right. Ladies and  
8 gentlemen, all the evidence has been presented.  
9 And so, as I mentioned, we'll need an extended  
10 recess to prepare the final instructions, and  
11 it's lunchtime. So why don't we do this: Why  
12 don't we reconvene -- it's 10 after 12:00 --  
13 reconvene at 1:30. That will give you extra time  
14 for lunch.

15 And, again, you'll be on your own  
16 for lunch. You can visit one of the downtown  
17 restaurants -- they're only three minutes away or  
18 so -- and then be back here, if you would, at  
19 1:30, and we'll start with the final  
20 instructions.

21 Please remember the admonition I've  
22 given you not to discuss the case among  
23 yourselves or with others or permit anyone to  
24 discuss it in your presence. Do not form or  
25 express any opinion about the case until it's

1 finally given to you to decide.

2 So you're excused, and report back  
3 to the jury assembly room at 1:30. Thank you for  
4 your patience.

5 (Proceedings resumed in open court  
6 outside the presence of the jury.)

7 THE COURT: Actually, I meant to  
8 have the CSOs keep everybody in the courtroom  
9 until they're gone, but we need to do that,  
10 though. It's too late. My fault.

11 Okay. This is off the record then.

12 (A discussion was held off the  
13 record.)

14 THE COURT: We'll be in recess until  
15 let's say 10 minutes to 1:00.

16 MR. SORRELL: Yes, sir.

17 THE COURT: Actually, 1 o'clock is  
18 probably enough, don't you think?

19 MR. SORRELL: If I may, yes, but  
20 we'll be back when you say.

21 THE COURT: Let's do it at 1  
22 o'clock. That's plenty of time.

23 MR. SORRELL: Thank you.

24 (Lunch recess was taken.)

25 (Proceedings resumed in open court

1 outside the presence of the jury.)

2 (Instruction conference.)

3 THE COURT: We'll go on the record  
4 now. Counsel, this is our instruction  
5 conference. And what I propose to do since  
6 everybody has indicated to the Court that you're  
7 in agreement with all of the proposed  
8 instructions and that you have worked out any  
9 differences that you have, I propose that I will  
10 number each of them one by one, and then I will  
11 just ask at the conclusion whether there are any  
12 objections at all by either party --

13 MR. SORRELL: Yes, Your Honor.

14 THE COURT: -- instead of going  
15 through each one one by one.

16 MR. SORRELL: There are two  
17 alternates in the instructions.

18 THE COURT: Yes. I'm aware of that.

19 MR. SORRELL: Yes. Okay. Thank  
20 you.

21 THE COURT: So Instruction Number 1  
22 will be Eighth Circuit 3.01. Instruction Number  
23 2 will be Eighth Circuit 3.02. Instruction  
24 Number 3 is 3.03. Instruction Number 4 is 3.04,  
25 the alternate instruction, which references that

1 you should judge the testimony of the Defendant  
2 in the same manner as you should judge the  
3 testimony of any other witnesses. Instruction  
4 Number 5 is 3.06.

5 MR. SORRELL: I think you'll use the  
6 first one there.

7 THE COURT: Yes. Yes.

8 MR. SORRELL: Okay.

9 THE COURT: So I will discard the --

10 MR. SORRELL: Alternate.

11 THE COURT: -- 3.06 instruction  
12 that references the fact that the Defendant did  
13 not testify.

14 MR. SORRELL: Right.

15 THE COURT: Instruction Number 6 is  
16 Eighth Circuit 2.07. Now, on this -- what is --  
17 is this something that's required and necessary  
18 in the case?

19 MR. SORRELL: It's not required,  
20 Judge, but Ms. Booth requested it, and I included  
21 at her request.

22 THE COURT: Okay.

23 MR. SORRELL: And I don't have an  
24 objection to it.

25 THE COURT: Okay.

1 MR. TILSEN: The stipulation?

2 MS. BOOTH: No, 2.07.

3 THE COURT: So otherwise it's an  
4 optional instruction, but since both of you  
5 requested it --

6 MR. SORRELL: Yes, Your Honor.

7 THE COURT: -- I'll agree.

8 Instruction Number 7 is Eighth Circuit 2.08.

9 MR. SORRELL: And, Your Honor,  
10 that's the one that says, You have heard?

11 THE COURT: Yes.

12 MR. SORRELL: As opposed to -- yeah.

13 THE COURT: Instruction 8 then will  
14 be the Statute 922(g)(1). 9 is the verdict  
15 director for Count 1. 10 is the verdict director  
16 for Count 2. 11 is the Eighth Circuit 7.05, the  
17 intent or knowledge instruction. 12 is the  
18 constructive possession instruction, Eighth  
19 Circuit 8.02. 13 is the reasonable doubt  
20 instruction. And 14 is the rules for the jury  
21 instruction 3.12.

22 And then attached to those  
23 instructions are the forms of verdict. So  
24 Count 1 will reference Instruction Number 9, and  
25 Count 2 will reference Instruction Number 10.

1 MR. SORRELL: Yes, Your Honor.

2 THE COURT: Any objections by the  
3 Government?

4 MR. SORRELL: No, Your Honor.

5 THE COURT: Do you wish to tender  
6 any other instructions?

7 MR. SORRELL: No, Your Honor.

8 THE COURT: Any objections by  
9 Defendant?

10 MS. BOOTH: No, sir.

11 THE COURT: Do you wish to tender  
12 any other instructions?

13 MS. BOOTH: No, Your Honor.

14 THE COURT: How much time would you  
15 like for oral argument?

16 MR. SORRELL: 20 minutes.

17 THE COURT: How do you want to have  
18 your time split?

19 MR. SORRELL: 13 and 7 with a  
20 two-minute warning.

21 THE COURT: What?

22 MR. SORRELL: 13 and 7.

23 THE COURT: Oh, 13 and -- I thought  
24 you -- yeah, 13 and 7.

25 MR. SORRELL: With a two-minute

1 warning.

2 MS. BOOTH: 20 minutes, sir.

3 THE COURT: And how much --

4 two-minute warning for both of you; is that  
5 right?

6 MS. BOOTH: How about a five-minute  
7 warning, if I may.

8 THE COURT: Five-minute warning and  
9 then two minutes both ways for you?

10 MR. SORRELL: Yes.

11 THE COURT: All right. Anything  
12 else you want to take up before the closing  
13 arguments? And then we'll take another 10-minute  
14 break.

15 MR. SORRELL: No, Your Honor.

16 MS. BOOTH: No, sir.

17 THE COURT: Okay.

18 MR. TILSEN: No, Your Honor.

19 THE COURT: All right. We'll be in  
20 recess for another 10 minutes or so until 1:30,  
21 and we'll call everybody in at that time.

22 We'll go off the record.

23 (A discussion was held off the  
24 record.)

25 (Proceedings stood in temporary

1 recess.)

2 (Proceedings resumed in open court  
3 outside the presence of the jury.)

4 THE COURT: Any preliminary matters  
5 before we bring the jury in?

6 MR. SORRELL: Nope.

7 MS. BOOTH: No, sir.

8 THE COURT: Okay. You can bring  
9 them in then.

10 (Proceedings resumed in open court.)

11 THE COURT: Please be seated. This  
12 is Instruction Number 1: Members of the jury,  
13 the instructions I gave you at the beginning of  
14 the trial and during the trial remain in effect.  
15 I now give you some additional instructions. You  
16 must, of course, continue to follow the  
17 instructions I gave you earlier as well as those  
18 I give you now.

19 You must not single out some  
20 instructions and ignore others, because all are  
21 important. This is true even though some of  
22 those I gave you at the beginning of and during  
23 trial are not repeated here. The instructions  
24 I'm going to give you now are in writing and will  
25 be available to you in the jury room.

1                   I emphasize, however, that this does  
2 not mean that they are more important than my  
3 earlier instructions. Again, all instructions,  
4 whether given and whether in writing or not, must  
5 be followed.

6                   Instruction 2: It is your duty to  
7 find from the evidence what the facts are. You  
8 will then apply the law as I give it to you to  
9 those facts. You must follow my instructions on  
10 the law even if you thought the law was different  
11 or should be different.

12                  Do not allow sympathy or prejudice  
13 to influence you. The law demands of you a just  
14 verdict unaffected by anything except the  
15 evidence, your common sense and the law as I give  
16 it to you.

17                  Instruction Number 3: I have  
18 mentioned the word evidence. The evidence in  
19 this case consists of the testimony of witnesses,  
20 the documents and the other things received as  
21 exhibits. You may use reason and common sense to  
22 draw deductions or conclusions from facts which  
23 have been established by the evidence in the  
24 case.

25                  Certain things are not evidence. I

1 shall list those things again for you now. One,  
2 statements, arguments, questions and comments by  
3 lawyers representing the parties in the case are  
4 not evidence.

5 Two, objections are not evidence.

6 Lawyers have a right to object when they believe  
7 something is improper. You should not be  
8 influenced by the objection. If I sustained an  
9 objection to a question, you must ignore the  
10 question and must not try to guess what the  
11 answer might have been.

12 Three, testimony that I struck from  
13 the record or told you to disregard is not  
14 evidence and must not be considered.

15 Four, anything you saw or heard  
16 about this case outside the courtroom is not  
17 evidence.

18 Finally, if you were instructed that  
19 some evidence was received for a limited purpose  
20 only, you must follow that instruction.

21 Instruction Number 4: In deciding  
22 what the facts are you may have to decide what  
23 testimony you believe and what testimony you do  
24 not believe. You may believe all of what a  
25 witness said or only part of it or none of it.

1                  In deciding what testimony to  
2 believe, consider the witness's intelligence, the  
3 opportunity the witness had to have seen or heard  
4 the things testified about, the witness's memory,  
5 any motives that witness may have for testifying  
6 a certain way, the manner of the witness while  
7 testifying, whether that witness said something  
8 different at an earlier time, the general  
9 reasonableness of the testimony and the extent to  
10 which the testimony is consistent with any  
11 evidence that you believe.

12                In deciding whether or not to  
13 believe a witness, keep in mind that people  
14 sometimes hear or see things differently and  
15 sometimes forget things. You need to consider,  
16 therefore, whether a contradiction is an innocent  
17 misrecollection or a lapse of memory or an  
18 intentional falsehood, and that may depend on  
19 whether it has to do with an important fact or  
20 only a small detail.

21                You should judge the testimony of  
22 the Defendant in the same manner as you judge the  
23 testimony of any other witnesses.

24                Instruction Number 5: The  
25 indictment in this case charges the Defendant

1 with two different crimes. Count 1 charges that  
2 the Defendant committed the crime of felon in  
3 possession of a firearm. Count 2 also charges  
4 that the Defendant committed the crime of felon  
5 in possession of a firearm, but charges  
6 possession of a different firearm. The Defendant  
7 has pleaded not guilty to each of those charges.

8 The indictment is simply the  
9 document that formally charges the Defendant with  
10 the crimes for which he is on trial. The  
11 indictment is not evidence.

12 At the beginning of the trial I  
13 instructed you that you must presume the  
14 Defendant to be innocent. Thus, the Defendant  
15 began the trial with a clean slate with no  
16 evidence against him.

17 The presumption of innocence alone  
18 is sufficient to find the Defendant not guilty  
19 and can be overcome only if the Government proved  
20 beyond a reasonable doubt each element of the  
21 crimes charged.

22 Keep in mind that each count charges  
23 a separate crime. You must consider each count  
24 separately and return a separate verdict for each  
25 count.

1                   There is no burden upon a Defendant  
2 to prove that he or she is innocent. Instead,  
3 the burden of proof remains on the Government  
4 through throughout the trial.

5                   Instruction No. 6: You have heard  
6 testimony that the Barrett C. Swan made a  
7 statement to Jonathan Kemp. It is for you to  
8 decide, first, whether Barrett C. Swan made the  
9 statement; and, second, if so, how much weight  
10 you should give to it.

11                  In making these two decisions you  
12 should consider all of the evidence, including  
13 the circumstances under which the statement may  
14 have been made.

15                  Instruction Number 7: You've heard  
16 evidence that the Defendant was previously  
17 convicted of the crime of felon in possession of  
18 a firearm. You may consider this evidence only  
19 if you unanimously find it is more likely true  
20 than not true.

21                  You decide that by considering all  
22 of the evidence and deciding what evidence is  
23 more believable. This is a lower standard than  
24 proof beyond reasonable doubt.

25                  If you find this evidence has been

1 proved, then you may consider it to help you  
2 decide the issues of motive, opportunity, intent,  
3 preparation, plan, knowledge, absence of mistake  
4 or lack of accident. You should give it the  
5 weight and value you believe it is entitled to  
6 receive. If you were to find that this evidence  
7 has not been proved, you must disregard it.

8 Remember, even if you find that the  
9 Defendant may have committed a similar act in the  
10 past, this is not evidence that he committed such  
11 an act in this case. You may not convict a  
12 person simply because you believe he may have  
13 committed similar acts in the past.

14 The Defendant is on trial only for  
15 the crimes charged, and you may consider the  
16 evidence of prior acts only on the issues stated  
17 above.

18 Instruction Number 8: The charges  
19 in the indictment are based on statutes, which  
20 are federal law. The statute for Counts 1 and 2  
21 is Section 922(g)(1) of Title 18, United States  
22 Code, which provides in part as follows: It  
23 shall be unlawful for any person who has been  
24 convicted in any court of a crime punishable by  
25 imprisonment for a term exceeding one year to

1 possess any firearm which has been shipped or  
2 transported in interstate or foreign commerce.

3 Instruction Number 9: It is a crime  
4 for a felon to possess a firearm as charged in  
5 Count 1 of the indictment. This crime has four  
6 elements. One, the Defendant had been convicted  
7 of a crime punishable by imprisonment for more  
8 than one year.

9 Two, the Defendant knew that he had  
10 been convicted of a crime punishable by  
11 imprisonment for more than one year.

12 Three, after that the Defendant  
13 knowingly possessed a firearm; that is, a Smith &  
14 Wesson Model SD9VE nine-millimeter handgun  
15 bearing Serial Number HEN9114.

16 And, four, the firearm was  
17 transported across a state line at some time  
18 during or before the Defendant's possession of  
19 it.

20 You are instructed that the  
21 Government and the Defendant have agreed that the  
22 Defendant has been convicted of a crime  
23 punishable by imprisonment for more than one year  
24 under the laws of the State of Missouri, and you  
25 must consider the first element as proven.

1                    You are instructed that the  
2 Government and the Defendant have agreed that the  
3 Defendant knew he had been convicted of a crime  
4 punishable by imprisonment for more than one year  
5 under the laws of the State of Missouri, and you  
6 must consider the second element as proven.

7                    You are instructed that the  
8 Government and the Defendant have agreed that the  
9 Smith & Wesson firearm mentioned above is a  
10 firearm as defined by federal statutes and that  
11 it affected interstate commerce, and you must  
12 consider the fourth element as proven.

13                  The term firearm means any weapon  
14 which will or is designed to be or may be readily  
15 converted to expel a projectile by the action of  
16 an explosive.

17                  If all of these elements have been  
18 proved beyond a reasonable doubt as to the  
19 Defendant, Barrett C. Swan, then you must find  
20 the Defendant guilty of the crime charged under  
21 Count 1. Otherwise, you must find the Defendant  
22 not guilty of this crime under Count 1.

23                  Instruction Number 10: It is a  
24 crime for a felon to possess a firearm as charged  
25 in Count 2 of the indictment. This crime has

1 four elements. One, the Defendant had been  
2 convicted of a crime punishable by imprisonment  
3 for more than one year.

4 Two, the Defendant knew that he had  
5 been convicted of a crime punishable by  
6 imprisonment for more than one year.

7 Three, after that the Defendant  
8 knowingly possessed a firearm; that is, a Smith &  
9 Wesson Model M&P9 Shield nine-millimeter handgun  
10 bearing Serial Number LDE1400.

11 And, four, the firearm was  
12 transported across a state line at some time  
13 during or before the Defendant's possession of  
14 it.

15 You are instructed that the  
16 Government and the Defendant have agreed that the  
17 Defendant has been convicted of a crime  
18 punishable by imprisonment for more than one year  
19 under the laws of the State of Missouri, and you  
20 must consider that first element as proven.

21 You are instructed that the  
22 Government and the Defendant have agreed that the  
23 Defendant knew that he had been convicted of a  
24 crime punishable by imprisonment for more than  
25 one year under the laws of the State of Missouri,

1 and you must consider the second element as  
2 proven.

3 You are instructed that the  
4 Government and the Defendant have agreed that the  
5 Smith & Wesson firearm mentioned above is a  
6 firearm as defined by federal statutes and that  
7 it affected interstate commerce, and you must  
8 consider the fourth element as proven.

9 The term firearm means any weapon  
10 which will or is designed to or may be readily  
11 converted to expel a projectile by the action of  
12 an explosive.

13 If all of these elements have been  
14 proved beyond a reasonable doubt as to Defendant  
15 Barrett C. Swan, then you must find the Defendant  
16 guilty of the crime charged under Count 2.  
17 Otherwise, you must find the Defendant not guilty  
18 of this crime under Count 2.

19 Instruction Number 11: Intent or  
20 knowledge may be proved like anything else. You  
21 may consider any statements made and acts done by  
22 the Defendant and all the facts and circumstances  
23 in evidence which may aid in a determination of  
24 Defendant's knowledge or intent.

25 You may but are not required to

1 infer that a person intends the natural and  
2 probable consequences of acts knowingly done or  
3 knowingly omitted.

4 Instruction Number 12: The law  
5 recognizes several kinds of possession. A person  
6 may have actual possession or constructive  
7 possession. A person may have sole or joint  
8 possession.

9 A person who knowingly has direct  
10 physical control over a thing at a given time is  
11 then in actual possession of it.

12 A person who, although not in actual  
13 possession, has both the power and the intention  
14 at a given time to exercise dominion or control  
15 over a thing either directly or through another  
16 person or persons is then in constructive  
17 possession of it.

18 If one person alone has actual or  
19 constructive possession of a thing, possession is  
20 sole. If two or more persons share actual or  
21 constructive possession of a thing, possession is  
22 joint.

23 Whenever the word possession has  
24 been used in these instructions, it includes  
25 actual as well as constructive possession and

1 also sole as well as joint possession.

2                     Instruction Number 13: Reasonable  
3 doubt reasonable is doubt based upon reason and  
4 common sense and not doubt based on speculation.  
5 A reasonable doubt may arise from careful and  
6 impartial consideration of all the evidence or  
7 from a lack of evidence.

8                     Proof beyond a reasonable doubt is  
9 proof of such a convincing character that a  
10 reasonable person, after careful consideration,  
11 would not hesitate to rely and act upon that  
12 proof in life's most important decisions.

13                     Proof beyond a reasonable doubt is  
14 proof that leaves you firmly convinced of the  
15 Defendant's guilt. Proof beyond a reasonable  
16 doubt does not mean proof beyond all possible  
17 doubt.

18                     Instruction Number 14: In  
19 conducting your deliberations and returning your  
20 verdict there are certain rules you must follow.  
21 I will list those rules for you now.

22                     First, when you go to the jury room,  
23 you must select one of your members as your  
24 foreperson. That person will preside over your  
25 discussions and speak for you here in court.

1                   Second, it is your duty as jurors to  
2 discuss this case with one another in the jury  
3 room. You should try to reach agreement if you  
4 can do so without violence to individual  
5 judgment, because a verdict, whether guilty or  
6 not guilty, must be unanimous.

7                   Each of you must make your own  
8 conscientious decision, but only after you have  
9 considered all the evidence, discussed it fully  
10 with your fellow jurors and listened to the views  
11 of your fellow jurors.

12                  Do not be afraid to change your  
13 opinions if the discussion persuades you that you  
14 should. But do not come to a decision simply  
15 because other jurors think it is right or simply  
16 to reach a verdict.

17                  Third, if the Defendant is found  
18 guilty, the sentence to be imposed is my  
19 responsibility. You may not consider punishment  
20 in any way in deciding whether the Government has  
21 proved its case beyond a reasonable doubt.

22                  Fourth, if you need to communicate  
23 with me during your deliberations, you may send a  
24 note to me through the marshal or bailiff signed  
25 by one or more jurors. I will respond as soon as

1 possible either in writing or orally in open  
2 court.

3 Remember that you should not tell  
4 anyone, including me, how your votes stand  
5 numerically.

6 Fifth, your verdict should be based  
7 solely on the evidence and on the law which I  
8 have given you to you in my instructions. The  
9 verdict, whether guilty or not guilty, must be  
10 unanimous. Nothing I have said or done is  
11 intended to suggest what your verdict should be.  
12 That is entirely for you to decide.

13 Finally, the verdict form is simply  
14 the written notice of the decision that you reach  
15 in this case. You will take this form to the  
16 jury room, and when each of you has agreed on the  
17 verdicts, your foreperson will fill in the forms,  
18 sign and date it and advise the marshal or  
19 bailiff you are ready to return to the courtroom.

20 And then attached to these  
21 instructions is the verdict form itself.

22 The lawyers have asked that I give  
23 them a warning about the time that their  
24 allotment for argument is about to expire, and  
25 I'll do that.

So, Ms. Woodruff.

## (Government's Closing Argument by

Ms. Woodruff.)

4 MS. WOODRUFF: Thank you. May it  
5 please the Court.

Ladies and gentlemen, first I want to thank you for your attention over the past couple of days. I know that your time is valuable, and on behalf of the Government we thank you for being here and for paying such close attention.

12 In the very beginning of this trial  
13 I told you that when the evidence is boiled down  
14 to its bare bones it's all about one man, and  
15 that man is Barrett Swan. It's not about the  
16 police officers. It's not about his girlfriends.  
17 It's about Barrett Swan.

18 Now, you heard evidence, and the  
19 Judge read you an instruction that Mr. Swan has a  
20 prior conviction -- a prior felony conviction for  
21 felon in possession of a firearm. Just as the  
22 Judge instructed you, you may consider that  
23 evidence to show his intent to possess these two  
24 guns as well as the lack of mistake or accident  
25 in his intent to possess these two guns.

1                   Mr. Swan knew he was not allowed to  
2 possess firearms. He testified himself and told  
3 you he knew he was not allowed to possess  
4 firearms. And yet twice within the space of just  
5 a couple of months last year he was found to be  
6 in possession of guns each time. That is not a  
7 coincidence.

8                   Let's talk about the evidence that  
9 you heard for each of these counts. Count 1,  
10 Mr. Swan is charged with felon in possession of a  
11 firearm for events that occurred actually just  
12 blocks from here on May 26th of 2018. In that  
13 case what should have just been a simple traffic  
14 stop for speeding turned into something much  
15 more.

16                  Mr. Swan did not resist arrest that  
17 night and get into a car pursuit and a foot  
18 pursuit and end up being arrested at gunpoint  
19 with the police because he was afraid of a DWI.  
20 He ran because he had a gun. He says he had  
21 plenty of time to get rid of everything.

22                  Well, if he was so afraid of a DWI,  
23 he didn't throw out that bottle of Remy in the  
24 front passenger seat. He didn't throw out that  
25 little marijuana cigarette. And he didn't throw

1 out the gun.

2 Now, I will admit he probably didn't  
3 have time to do any of that. Those things  
4 happened so fast. From start to finish on  
5 Count 1 it was 3 minutes. I would say Mr. Swan  
6 probably had his hands pretty full. He was  
7 driving that Dodge Charger that he proudly stated  
8 gets up to 160 at about 90 or 100 miles an hour  
9 coming across the Mississippi River bridge.

10 Then he gets into residential areas.  
11 He's got police chasing him, and he's going  
12 70 miles an hour. He ends up sliding and  
13 crashing his car hitting another parked car. He  
14 had his hands full. He didn't have time to get  
15 rid of anything.

16 The best he could do was just try to  
17 distance himself from that gun, and that's  
18 exactly what he did. He tried to get as far away  
19 as he possibly could from that Smith & Wesson  
20 semi-automatic nine-millimeter handgun.

21 And that gun, when Officer Yoder  
22 found it in the car, it was right there, right in  
23 that driver's side open pocket. You know that  
24 kind we all have in our cars where things bump  
25 around when you open or you slam the door, and

1       guns are heavy. They're not -- it wasn't in a  
2 holster. It was just out there. That's going to  
3 bump around a bit. You're going to hear it. So  
4 for him to claim that he didn't know it was there  
5 is just not believable.

6                     And the other thing about where that  
7 gun was located, Mr. Swan is left handed. It was  
8 located, and it was positioned in such a way that  
9 he could easily reach down with his dominant hand  
10 and pull it right up if he were to need it.

11                  That was not Ebony Stigall's gun. I  
12 know that she came in and she testified and she  
13 said she bought that gun at a trade show or  
14 something down in Poplar Bluff, but you have to  
15 consider why she would say something like that.

16                  She claimed today that their  
17 relationship is over. She's still here. She  
18 still cares enough to stick around and see what  
19 happens. She testified that she would help him  
20 out if she could, and that's exactly what she  
21 tried to do today.

22                  Now, when she found out that  
23 Mr. Swan had another girlfriend, she said she was  
24 angry. She said she went to confront him, and  
25 that is very understandable. Any person in a

1 loving relationship is going to want to find out  
2 what is going on with that.

3                   But what is not loving is leaving  
4 him to sit for over a year for a charge that she  
5 says he's not guilty of, but she could have  
6 contacted any law enforcement and said that gun  
7 belonged to me, but she did not do that. She did  
8 not contact the Cape Girardeau Police Department.  
9 She did not contact ATF. She did not contact the  
10 U.S. Attorney's Office. Instead, she saved that  
11 story until today to tell you, and I understand  
12 that as well.

13                  You-all saw how Tiara Thorpe fell  
14 apart when we had a chance to question her about  
15 her story, when we had a chance to investigate  
16 her version of events. That is why Ebony didn't  
17 tell us her story. She didn't want us to have a  
18 chance to look into it, and we didn't. We didn't  
19 have a chance to look into it. We heard it for  
20 the first time when you heard it.

21                  This is not a case about girlfriend  
22 drama. This is a case about a convicted felon  
23 who possessed two firearms. Now, Mr. Swan seems  
24 to suggest that his failure to get rid of items  
25 weighs in his favor. But that just is not common

1 sense, ladies and gentlemen, and this case is all  
2 about common sense.

3 Ms. Booth told you in her opening  
4 statements that there's an old saying that  
5 ignorance is bliss. Well, I have another old  
6 saying for you, and it's if it looks like a duck  
7 and it quacks like a duck, it's a duck. And here  
8 we have a situation that is just so obvious.  
9 Mr. Swan is for sure guilty of Count 1.

10 Now, as to Count 2, that one  
11 occurred August 1st, 2018, in Florissant,  
12 Missouri just a bare two months later, and it's  
13 another simple traffic stop except this time  
14 Mr. Swan does not run. Instead he lies.

15 And he testified today that he has  
16 lied to protect himself in the past. He lied to  
17 his girlfriends, and, ladies and gentlemen, I  
18 would say that he lied to you today.

19 He lied to Officer Kemp on  
20 August 1st not because he knew for sure he had a  
21 warrant. He didn't know. Instead, he lied  
22 because he had another gun, except this time it  
23 wasn't just beside him on his left side, it was  
24 underneath him on his left side. He was sitting  
25 right on top of it.

1                   And what kind of gun was that? It  
2 was another Smith & Wesson semi-automatic  
3 nine-millimeter handgun. Now, we don't just have  
4 the officer's word for it about that gun and  
5 Mr. Swan's possession of it. We also have  
6 Mr. Swan's words. He told Tiara Thorpe when he  
7 was sitting in the back of that patrol car, I'm  
8 done.

9                   He told Officer Kemp, we both know  
10 what you found in that car. He also told Officer  
11 Kemp that he would rather be in this situation  
12 right here than the one he had been in in the  
13 past when he was shot, and he didn't have  
14 anything on him, and I get that. I understand.

15                  And I am sorry that Mr. Swan was  
16 shot three times in the back. That's horrible.  
17 I can also completely appreciate why he would  
18 want to have a gun on him from that time going  
19 forward. That makes sense.

20                  Now, Tiara Thorpe, she came in,  
21 another girl friend, to say that that gun belonged  
22 to her, that he didn't even know that it was  
23 there. He was a hot mess.

24                  Now, Tiara Thorpe wants you to  
25 believe that she's so afraid for her safety

1 living in St. Louis because she's been victimized  
2 in crimes many times that she always has a gun  
3 with her and that she carries it with her, and  
4 she has it for her own personal protection and  
5 that it is necessary for herself as a single  
6 woman and a mother and somebody who's had  
7 horrible things happen.

8                   But she also testified that she  
9 didn't replace that gun. This is the only gun  
10 she's ever bought. And she didn't keep it  
11 conveniently right next to her dominant hand like  
12 Barrett Swan did in his car in May. Instead,  
13 Tiara Thorpe says she buried it down beneath a  
14 couple of compartments in her center console.  
15 That is just not believable.

16                   And then she didn't even replace it.  
17 She talked a lot about how so afraid she was for  
18 herself, but she didn't go out and immediately  
19 buy herself another gun. Common sense, ladies  
20 and gentlemen.

21                   I will say Tiara Thorpe, she bought  
22 that gun. I don't doubt it. We have the ATF  
23 trace. There was some squabble about when she  
24 bought it, but she bought it. But buying it  
25 doesn't mean that she possessed it. Purchasing

1 it doesn't mean ownership.

2 The Judge read you an instruction,  
3 and it was Instruction Number 12, and it gives  
4 you the legal definition for possession. I would  
5 encourage you to take a look at it if you have  
6 any question about what that means. Because  
7 possession can be actual or constructive. It can  
8 be joint or sole. It's all laid out in that  
9 instruction for you.

10 And in this case Mr. Swan possessed  
11 both of those guns as that term is defined under  
12 the law. He knew they were both there. Of  
13 course, he knew they were both there. Mr. Swan  
14 is a convicted felon. That's what brought him  
15 here today --

16 THE COURT: Two minutes.

17 MS. WOODRUFF: Thank you --  
18 possessing those two guns. He knew he couldn't  
19 have guns. He knew if he got caught with a gun  
20 again, that it would not be good for him.

21 So each time -- each arrest he was  
22 looking for a way out. On May 26th he tried to  
23 find his way out by running from police in his  
24 car, running from police on foot, and it didn't  
25 work.

1                   On August 1st he knew running  
2 wouldn't work, so that time he tried to lie his  
3 way out. He gave a false name. That didn't work  
4 either. Today Tiara Thorpe and Ebony Stigall  
5 came in, and they tried to give Mr. Swan a way  
6 out by saying those guns belong to them, and he,  
7 of course, had no idea about them.

8                   But there's no way out this time,  
9 ladies and gentlemen. This is not a case about a  
10 man who just so happens to be plagued with  
11 multiple gun-toting girlfriends. That is not  
12 common sense. Because really when you think  
13 about it, if that were true, then Barrett Swan is  
14 either the unluckiest man alive or he's guilty.

15                  Use your common sense, ladies and  
16 gentlemen. Consider the evidence that you heard,  
17 the times that everything went down, the location  
18 of those guns and Barrett Swan's own words.

19                  Use your common sense and return a  
20 verdict of guilty on both counts. Thank you.

21                  THE COURT: Ms. Booth.

22                  (Defendant's Closing Argument by Ms.  
23 Booth.)

24                  MS. BOOTH: Ladies and gentlemen, I  
25 too thank you for paying attention -- close

1 attention these past few days. So much is on  
2 this line for Mr. Swan. And coming into this he  
3 and I both knew it would be an uphill battle.

4 Let's be honest. He's a convicted  
5 felon. He has a prior for felon in possession of  
6 a firearm, and he's accused of possessing  
7 firearms on two different occasions last summer.  
8 That's an uphill battle.

9 All we have for Mr. Swan is his  
10 truth, and we laid it down here in front of you  
11 today. And we knew it would have blemishes, but  
12 we laid it down. He got on the stand. He told  
13 you about his felony past. He was honest about  
14 lying to the women in his life. And that doesn't  
15 escape my attention. I'm a woman.

16 He's made many mistakes, but he did  
17 not know that those firearms were there. If  
18 Ebony Stigall and Shavion Reed wanted to come in  
19 and lie and give a really good lie, they wouldn't  
20 have admitted on the stand that Barrett is a liar  
21 to women. They could have come up with something  
22 different. But they told the truth, and the  
23 truth was ugly to them too.

24 And Ms. Stigall about coming forward  
25 with the truth, she did come forward with the

1       truth. And, as you saw, with Tiara Thorpe, who  
2 immediately began calling the Florissant Police  
3 Department, the truth didn't matter. You come  
4 forward with the truth in a trial.

5                  If Ms. Stigall had come to the U.S.  
6 Attorney's Office a year ago and knocked on their  
7 door and said, I'm Ebony Stigall, and that gun  
8 was mine, and Barrett knew nothing about it, is  
9 the U.S. Government just going to back down and  
10 say, oh, we're very sorry, we'll just go ahead  
11 and dismiss the case? That's not how it works.  
12 You bring your evidence to trial, and you present  
13 it to the jury, so you-all can decide who is  
14 telling the truth and who is lying.

15                  Proof beyond a reasonable doubt, in  
16 this case, here's what it would like look on  
17 Count 1 and even on Count 2, fingerprints.  
18 There's no forensic evidence that Mr. Swan ever  
19 touched either of these guns. And we heard the  
20 police officer Officer Hellmann talk about well,  
21 you know, we don't usually get prints off of  
22 guns, but there are some smooth areas where we  
23 could fingerprint if we wanted to. He admitted  
24 that the slide of the gun -- I'm sorry, magazine  
25 of the gun where you insert it if the gun is

1 plastic and its surface is rough, but  
2 fingerprints can be taken off the magazine.

3                           And he said in his Direct  
4 Examination, but the gun was in Mr. Swan's car.  
5 It's expensive to do those tests. It takes a  
6 long time. Why do it? And typically we don't  
7 get fingerprints.

8                            Well, if that was true, why did the  
9 police officers take such care of putting their  
10 gloves on to handle the firearm in the first  
11 place? Fingerprints could have been obtained in  
12 this case and examined, but it's just not  
13 important to them to do that. It's important to  
14 Mr. Swan. He's the one that has to pay for the  
15 time with his liberty and a significant amount of  
16 time for a wrongful conviction.

17                             Returning to Count 2 as well with  
18 Officer Kemp. So many things don't make sense.  
19 It's very simple. It was a simple traffic stop.  
20 Why not have all the information in his police  
21 report accurately? The stop happened on August  
22 the 1st. Officer Kemp admitted his evidence  
23 sheets, his booking sheets, everything indicates  
24 that correct date of August 1st of 2018. But  
25 when it comes to the police narrative, and he

1 told us he wrote it on the same day, that date is  
2 wrong, August 8th of 2018.

3 And I cross-examined him about all  
4 the people who proofread his narrative for him  
5 and nobody caught it. His secretary who  
6 proofreads for grammar and spelling mistakes.  
7 His supervisors. No one caught it. Because the  
8 real report did indicate the truth at the  
9 beginning.

10 Ms. Thorpe did say that firearm was  
11 hers, and it was in the console, and that's what  
12 the first report did say. You saw Tiara Thorpe  
13 here today. How do you think she interacted with  
14 the Florissant Police Department when she started  
15 immediately calling and demanding you took my  
16 firearm away from me, which I can legally possess  
17 for no reason? Do you think, perhaps, she  
18 threatened to sue?

19 You witnessed her today. She is a  
20 fireball. And if a police officer takes a  
21 firearm away from someone who can legally possess  
22 it, they could be sued. The police department  
23 could be sued. Especially if it's in Florissant,  
24 Missouri, which is next to Ferguson, Missouri.  
25 There's race relations. Ms. Thorpe is black.

1 The officers are white.

Officer Fodde testified on rebuttal that he was there and everything went as Officer Kemp said, but Officer Fodde never even wrote a police report. Arresting a man on a federal ATF warrant for a gun charge, and he's apparently sitting on a firearm, and officer Fodde doesn't write a report, nor is he even mentioned in Officer Kemp's report.

Officer Kemp didn't even put in his report the amount of time that Mr. Swan sat in the car unattended. He didn't put it in his report, because it wouldn't make sense the man who knows he's about to be arrested on a federal arrest warrant who has a prior for felon in possession of a firearm would just sit on a firearm. It makes no sense.

1                   And with Ms. Thorpe, if that firearm  
2 had been out in the car, he would have said,  
3 Tiara, put that in your purse. It's her gun.  
4 She knows it. She bought it legally. The trace  
5 report goes back to her.

6                   All we can bring to you today is  
7 Mr. Swan's truth, and we've laid it down for you.  
8 There isn't proof beyond a reasonable doubt that  
9 he knew about either of these firearms and  
10 intended to possess them. There is reasonable  
11 doubt and a significant amount of it.

12                  I ask that you find Barrett Swan not  
13 guilty on both counts.

14                  THE COURT: Mr. Sorrell.

15                  MR. SORRELL: Thank you, Your Honor.

16                  (Government's Closing Argument  
17 Continued by Mr. Sorrell.)

18                  MR. SORRELL: Counsel, Mr. Swan.

19                  Ladies and gentlemen, we're just  
20 about to the end of the day, and I appreciate  
21 your attention and your patience in dealing with  
22 us while we weed our way through this.

23                  If I can, I'd like to talk about  
24 some of the things that Ms. Booth raised in her  
25 argument. Ms. Booth mentioned well, why -- or

1 why is everybody so concerned about Ms. Reed and  
2 Ms. Stigall not actually coming forward and  
3 saying, Hey, that's really my gun like  
4 Ms. Stigall could have.

5                   The problem is this: She says,  
6 well, would the U.S. Attorney's Office have  
7 dismissed it? Well, who knows. We never -- we  
8 didn't get a chance to see. But what you can do  
9 if you get that information is actually to  
10 investigate it.

11                  At that point if we'd have known a  
12 few months ago, we could have gone out to the car  
13 rental agency to see if there actually was a car  
14 that had been rented. Who knows. You haven't  
15 seen it today. No one knows anything about this  
16 car. It just magically appears at Mr. Swan's  
17 convenience and disappears the same way. We sure  
18 could have investigated that.

19                  If she'd have said I bought it at  
20 the sale barn over there on a Friday afternoon  
21 from some gentleman named whatever he was or  
22 here's their station, we could have gone over  
23 there with her and tried to find out who this  
24 person was, because we're always interested in  
25 finding out who's in possession of a stolen

1 handgun.

2                   That handgun belonged to Mr. Fowler.  
3 It didn't belong to Ms. Stigall. I don't care  
4 who she bought it from. And Mr. Fowler will get  
5 his gun back at the end of this case just like  
6 Ms. Thorpe will. We're not thieves. We return  
7 guns to their rightful owners.

8                   But Ms. Stigall didn't lawfully own  
9 that gun, and she should have come forward and  
10 said something, and we could have taken some  
11 action then to find out what her version of the  
12 facts were.

13                  Ms. Booth is critical of the fact  
14 that there's no fingerprints or DNA evidence for  
15 you to consider, but the officer explained that.  
16 Officer Hellmann said he's never received a  
17 positive result back on a DNA test or a  
18 fingerprint match on the gun. The surfaces don't  
19 work. The fingerprints just simply don't appear.  
20 The DNA is not there. It just doesn't work.

21                  It's in his experience. Now, he's  
22 an experienced officer. He's seen lots and lots  
23 of these cases. Far more than I'll ever see.  
24 And Ms. Booth also asked you, well, then why do  
25 officers put on gloves? Why do they take such

1 good care of the evidence? That's part of their  
2 training, of course.

3 And you should always remember the  
4 Government has the burden of proof, and that  
5 never changes. No matter what in this trial we  
6 always have the burden of proof to show Mr. Swan  
7 possessed that gun.

8 The reason the officers put on  
9 gloves and preserve it is because they don't know  
10 who might want to test this gun. Anybody could.  
11 Who knows later on who might want to take a look  
12 at the gun and do whatever with it. That way  
13 they've done their job. That's what they're  
14 trained to do. And they did what they were  
15 trained to do.

16 Ms. Booth says that the August 8  
17 date is wrong on Mr. Kemp's report, and that must  
18 mean that everything else about that report is  
19 wrong. My goodness, who could meet that  
20 standard? I'll be the first to fail. If a  
21 typographical error means that you're wrong on  
22 everything you do, then I'll have to just confess  
23 right now that I couldn't meet that not on any  
24 day of my life. And I doubt that Mr. Kemp can or  
25 anyone else in this room, but that simply is not

1 the way this works.

2                   The Court read you an instruction  
3 and then asked you to consider whether a  
4 statement made by an officer -- or a witness,  
5 rather, could contain a slight misrecollection.  
6 That's the instruction that we have here. Is  
7 that a slight misrecollection? It's certainly  
8 not in dispute. This event happened on  
9 August 1st, and everybody knows it.

10                  But then Ms. Booth goes on to say  
11 there's a real report, that there's another  
12 police report out there that shows what Ms.  
13 Thorpe said was true. And yet have you even it?  
14 I've looked for it. I can't find it.

15                  Has anybody seen this report that  
16 she told you there was? She stood right here  
17 where I'm standing and told you there's another  
18 police report. And yet she's had all the  
19 opportunity to investigate, all the resources  
20 that she has.

21                  There's no other report. There's no  
22 need for another report. Do you think if there  
23 was another report, the officer would have left  
24 any mistakes in it, that if he'd had the chance  
25 to go back if he would have known it was going to

1 be a federal investigation?

2 How is he supposed to know that this  
3 is going to turn into a case where he's going to  
4 come to Cape Girardeau and testify? He's a  
5 Florissant police officer. His case is the  
6 traffic stop, and that's the end of it. Anything  
7 else that happens to that gun case is going to be  
8 at the result of Officer Eggers' work or some  
9 other person.

10 THE COURT: Two minutes.

11 MR. SORRELL: Thank you.

12 There are many defects talked about  
13 in the officers' reports in Florissant, but what  
14 evidence have you heard today that can't be  
15 manufactured? And one of the things is that  
16 radio log and the calls that the officer made,  
17 they're all timed.

18 The officer testified about his  
19 seizing the firearm, that at 3:32:58, almost  
20 3:33, that the dispatch acknowledged a warrant.  
21 And three and a half minutes later he's calling  
22 back with the number of that gun. It fits his --  
23 that exhibit fits exactly what Officer Kemp  
24 testified to with no exceptions.

25 That radio log is kept by the County

1 of St. Louis. Florissant has no ability to  
2 change it. It's irrefutable. It backs up  
3 Officer Kemp's words exactly because Officer Kemp  
4 was telling the truth and so have all the other  
5 officers that you heard from today.

6 Instead of finding that Mr. Kemp --  
7 or Mr. Swan is simply an unlucky man we ask that  
8 you find him guilty of both counts. Thank you.

9 THE COURT: The bailiff will be  
10 sworn.

11 (Bailiff Sworn by Clerk.)

12 THE COURT: Here are the  
13 instructions.

14 All right. Go now with the bailiff  
15 to the jury room to begin your deliberations.  
16 Court is in recess.

17 (The jury went out to deliberate at  
18 2:22 p.m.)

19 (Proceedings stood in temporary  
20 recess.)

21 (Proceedings resumed in open court  
22 outside the presence of the jury.)

23 THE COURT: Do you want to make a  
24 motion?

25 MR. TILSEN: I do, Your Honor.

1 Apart from contraband or the weapons in this case  
2 I would move that you direct the Court's Clerk to  
3 deliver the photographic exhibits received in  
4 evidence for the jury so they will have them  
5 during their deliberations.

6 THE COURT: Okay. It's been my  
7 practice in more than 40 years of trial work that  
8 I only do that if there's a request from the  
9 jury.

10 What's the Government's position?

11 MR. SORRELL: The same. We just  
12 request that you send them back to the extent  
13 that you can if they request them whenever they  
14 request them except for the two firearms.

15 THE COURT: So if they request it,  
16 I'll certainly do that.

17 MR. TILSEN: I contend that  
18 Mr. Swan's right to a fair trial is at least  
19 dependent on the jury having access while during  
20 their deliberations to the evidence that was  
21 received by the Court, and it denies him his  
22 right to a fair trial to prevent them from having  
23 it at any time they want.

24 THE COURT: Okay. Your motion is  
25 overruled for now. Like I said, if they request

1 the exhibits, I will have them delivered to the  
2 jury room.

3 MR. TILSEN: Do they have a list of  
4 the exhibits?

5 THE COURT: What's that?

6 MR. TILSEN: Do they have a list?

7 THE COURT: Nope, not to my  
8 knowledge.

9 MR. TILSEN: That's a lot of  
10 exhibits for them to remember.

11 THE COURT: Okay. I made my ruling.  
12 Okay.

13 Anything else?

14 MR. SORRELL: No, Your Honor. Thank  
15 you.

16 (Proceedings stood in temporary  
17 recess.)

18 (Proceedings resumed in open court  
19 outside the presence of the jury.)

20 (Question by the jury.)

21 THE COURT: All right. Let's go on  
22 the record. The jury has sent a note: "Can we  
23 see the evidence?" "Can we see the Kemp report?"  
24 And then there's a question, "What hand do the  
25 girls use?"

1                   So I propose to send all the  
2 evidence back except for the firearms. And then  
3 in response to the question, "What hand do the  
4 girls use?" I would write, "You are to be guided  
5 solely by the evidence that was introduced in  
6 trial."

7                   Any objections to that?

8                   MS. WOODRUFF: No, sir.

9                   My only question is we have a couple  
10 of DVDs. There's one, I believe. Do you want to  
11 send that back as well?

12                  THE COURT: No, not unless they  
13 request that specifically.

14                  MS. WOODRUFF: Okay.

15                  THE COURT: And not the firearms, of  
16 course.

17                  MS. WOODRUFF: Right.

18                  MS. BOOTH: Your Honor, as to the  
19 Kemp report, I don't know if they formally  
20 entered the Kemp report into evidence. I know I  
21 asked him about it. I did enter my first page of  
22 one of his reports.

23                  MS. WOODRUFF: And, Judge, I believe  
24 that it was Defendant's Exhibit 0.

25                  MS. BOOTH: Yeah.

1                   MS. WOODRUFF: I believe that Mr.  
2 Sorrell read from the attached pages, so I would  
3 ask the entire thing go back.

4                   MS. BOOTH: Well, the only issue is,  
5 Judge, is that if we could redact some of it, but  
6 then the jury is going to wonder why it has  
7 Barrett's entire arrest record in that report,  
8 not the conviction report but arrest record.

9                   THE COURT: Well, I think that could  
10 probably be redacted.

11                  MS. BOOTH: Okay.

12                  THE COURT: What about that?

13                  MS. WOODRUFF: I have no objection  
14 to redacting it.

15                  THE COURT: And it wasn't introduced  
16 into evidence, on the other hand. That's the  
17 concern I have.

18                  So is this by way of stipulation or  
19 what?

20                  MS. WOODRUFF: It's my understanding  
21 at the beginning was that we each stipulated to  
22 the other's exhibits.

23                  And then when Ms. Booth used  
24 Defendant's Exhibit 0, the reports were attached  
25 to that, and then Mr. Sorrell used that exhibit

1 and read from it to the jury. So we took that as  
2 being the entire attachment.

3 THE COURT: Well, so what about is  
4 there an agreement that you can redact some of  
5 that stuff then?

6 MS. BOOTH: I believe that we can.

7 MS. WOODRUFF: I don't have any  
8 objection to redacting the Defendant's criminal  
9 history, of course.

10 THE COURT: Okay. Why don't we do  
11 that. In the meantime, any other objection to  
12 the response?

13 MS. WOODRUFF: Not from the  
14 Government.

15 MS. BOOTH: No, sir.

16 THE COURT: Okay. All right. And  
17 so we'll send all the evidence back now except  
18 for the Kemp report. When that is redacted, that  
19 can go back too. And not the firearms.

20 THE DEFENDANT: Excuse me, Judge.  
21 They just sent some things back. I don't know  
22 exactly what they're sending back there.

23 THE COURT: It doesn't matter. You  
24 have a lawyer that's making those decisions for  
25 you. That's not your decision.

1 MS. BOOTH: I'll talk to you about  
2 it, Barrett. It's all right.

3 THE CLERK: Court is in recess.

4 (Proceedings stood in temporary  
5 recess.)

6 (Proceedings resumed in open court.)

7 (Verdict received at 4:20 p.m. and  
8 Jury Not Polled.)

9 THE COURT: All right. You may be  
10 seated.

11 The Court will enter judgment in  
12 accordance with the verdict handed down by the  
13 jury today. The Court will also order a  
14 presentence investigation. And a sentencing date  
15 will be set for Tuesday, October 15th at  
16 1:40 p.m.

17 And with that, ladies and gentlemen,  
18 I want to thank you for your service. The  
19 admonition I gave you earlier not to discuss the  
20 case is now lifted, and you may discuss the case  
21 with whoever you wish, including the lawyers in  
22 the case.

23 But I appreciate the patience that  
24 you've shown throughout the trial. It's been  
25 difficult at times. And I will ask for the Court

1 Security Officers to assist you to your vehicles,  
2 if you wish. And otherwise, I thank you again.

3 So with that is there anything  
4 further for the Government?

5 MR. SORRELL: No, Your Honor. Thank  
6 you.

7 THE COURT: Or for Defendant?

8 MS. BOOTH: No, sir.

9 THE COURT: All right. I want to  
10 thank counsel too in front of the jury that the  
11 Court is grateful for the professionalism shown  
12 by both sides during the course of the trial.

13 So with that you're excused at this  
14 time, and the court is adjourned.

15 (PROCEEDINGS CONCLUDED AT 4:25 P.M.)

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1 C E R T I F I C A T E  
2

3 I, Alison M. Garagnani, Registered  
4 Merit Reporter and Certified Realtime Reporter,  
5 hereby certify that I am a duly appointed  
6 Official Court Reporter of the United States  
7 District Court for the Eastern District of  
8 Missouri.

9 I further certify that the foregoing  
10 is a true and accurate transcript of the  
11 proceedings held in the above-entitled case and  
12 that said transcript is a true and correct  
13 transcription of my stenographic notes.

14 I further certify that this  
15 transcript contains pages 295 through 506  
16 inclusive and that this reporter takes no  
17 responsibility for missing or damaged pages of  
18 this transcript when same transcript is copied by  
19 any party other than this reporter.

20 Dated Cape Girardeau, Missouri, this  
21 13th day of January, 2020.

22  
23  
24 -----  
25 /s/Alison M. Garagnani  
Alison M. Garagnani, CCR, CSR, RMR.  
Official Court Reporter